

COUR SUPÉRIEURE DE JUSTICE

E N T R E :

JOANNE ST. LEWIS

Plaignante

et

DENIS RANCOURT

Défendant

M O T I O N

DEVANT LE JUGE M. Z. CHARBONNEAU
Le 7 mai 2014, à OTTAWA (Ontario)

COMPARUTIONS:

M^e R. Dearden

Avocat de la plaignante

D. Rancourt

En personne

(i)
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LE MERCREDI 7 MAI 2014

THE COURT: Good morning. Bonjour.

M. RANCOURT: Bonjour.

MR. DEARDEN: Good morning, Your Honour.

THE COURT: All right.

CLERK REGISTRAR: We need to....

THE COURT: Who do we have here this morning?

M. RANCOURT: Bonjour, Monsieur le Juge. Je suis monsieur Denis Rancourt. Je suis le défendant dans cette cause.

LE TRIBUNAL: Merci.

MR. DEARDEN: Good morning, Your Honour. Rick Dearden, counsel for the plaintiff, Professor St. Lewis, who's sitting beside me and my associate, Anastasia Semenova.

MR. DOODY: Good morning, Your Honour. My name is Doody. Peter Doody. I act for five witnesses who have had summonses served on them by the defendant and for the University of Ottawa simply in respect of some privilege and relevance issues arising out of the summons that, in my submission, may have to - will have to be decided by this Court.

THE COURT: Okay. I....

L'INTERPRÈTE RENAUD: Bonjour, Monsieur le Juge. Les - les interprètes. Daniel Renaud. Odette Borris.

LE TRIBUNAL: Ah, okay. Bin peut-être - est-ce que - okay. Je suis pas trop au courant, là. C'est - je sais que j'ai - la documentation que j'ai reçu, correspondance ou autres, de monsieur Rancourt est en anglais, mais, en d'autres mots,

vous vous voulez que tout soit traduit pour vous, Monsieur Rancourt?

5 M. RANCOURT: Non. C'est pas ça, Monsieur le Juge. Ce qu'on a fait tout au long de cette cause, c'est que moi je me présente en français et je fais mes arguments en français et vu que monsieur Dearden est anglophone uniquement, c'est - ce que je dis est interprété vers l'anglais pour monsieur Dearden.

10 LE TRIBUNAL: Bon, c'est bien. Donc vous, vous allez vous adresser, que ça soit au tribunal ou au jury, vous allez vous adresser en - en français en tout temps.

M. RANCOURT: Oui.

15 LE TRIBUNAL: D'accord.

M. RANCOURT: Non, mais, Monsieur le Juge, j'aimerais juste répondre complètement à votre question. En principe, oui, mais il se peut, dépendant des témoins que je vais
20 questionner/interroger, s'ils sont anglophones, que je choisisse de poser des questions en anglais et....

25 LE TRIBUNAL: C'est - c'est très logique. Oui. Merci. Bon. So we'll swear the - we will proceed to swear the interpreters then. These are staff translators?

THE INTERPRETER RENAUD: I am a member of the permanent staff. Ms. Borris is a freelance.

30 THE INTERPRETER BORRIS: I'm a freelancer, Your Honour. Fully accredited.

THE COURT: Okay.

ODETTE BORRIS: INTERPRETER SWORN - French/English

DANIEL RENAUD: INTERPRETER SWORN - French/English

THE COURT: And was there any....

INTERPRÈTE BORRIS: Monsieur le Juge, est-ce qu'on peut vous demander de nous donner le temps de retourner à la cabine pour qu'on puisse interpréter?

LE TRIBUNAL: Certainement. Je m'excuse.

INTERPRÈTE BORRIS: Merci, beaucoup. Il y a pas de problème.

LE TRIBUNAL: Vous avez bien raison. Oui.

MR. DEARDEN: Okay, Your Honour.

THE COURT: All right. What I was going to say before anything else in view of, we're talking language is that, is it understood that I - that the Court will always speak English or will the Court address Mr. Rancourt in French?

M. RANCOURT: Non, Monsieur le Juge, et il est - ce qu'on a fait jusqu'à maintenant, ça fait quelques années, c'est que la Cour s'adresse souvent en français et s'adresse à moi en français. Comme ça j'ai - le niveau de confort est mieux et on se comprend mieux comme ça.

THE COURT: So everybody agrees with that way of proceeding?

MR. DEARDEN: Yes, sir.

THE COURT: Thank you. All right. I must say we're here this morning as a result of a letter that was sent to me by Mr. Dearden, who thankfully, wrote this letter and advised me that, listen, we may have to discuss a few things

preliminative matters before this trial starts next Monday.

Not knowing anything about this file, I said, yes and I thought there were a few simple matters and then I got both a list of matters, a long list of matters from Mr. Dearden and then a long list of matters from Mr. Rancourt. I still consider that this morning was a - simply somewhat of an informal conference to try to work out how we would proceed with the preliminary matters and how we would, in a more longer term planning, look at what we would do during the - the trial itself.

One of the matters, naturally, that was raised by Mr. Rancourt was a motion to recuse myself. For the first time, I note that there is a motion record. I didn't anticipate this this morning, as I say. To tell you how much I didn't anticipate this is that I had to borrow a gown there this morning because I was coming here ungowned to discuss the preliminary matters in question. So there's no doubt that we won't be able to decide, unless matters are agreed. I think we should still take the opportunity of discussing a number of things and try to sort out some things which are less - which require less of a strict decision, but rather trying to - to, with the agreement of everybody, trying to find out how we can proceed in the most efficient matter.

Now, obviously, there are other matters which will require a Court's - the Court's decision. For example, the motion to recuse myself, motions that there may be, I hear there's motions about questioning subpoenas or the like. I - there are a number of motions. Obviously there's also *voir dire* matters. For example, a *voir dire* on certain admissibility of certain evidence and things of that nature, the limitation, defence, et cetera, et cetera.

So we will have - because of the recusation motion, obviously one would assume that we would deal with that first, but I'm not prepared to deal with this even this morning.

MR. DEARDEN: Okay.

THE COURT: Now, we could - there's a number of ways we can proceed. I think my preferred view would be that we - that we simply impanel a jury on a Monday, that we send them home for a week. Then that I hear the motion starting with the recusation motion. If I'm recused, hopefully, maybe another judge can take on when the matter comes back on the Tuesday after the holiday Monday. If not, it may be that we'll have to declare a mistrial and have the trial later on. If I do not recuse myself, we will proceed with a - a number of *voir dire* and other preliminary decisions I have to make about evidence and so on. So that's the way I propose that it could be done.

5 The only other alternative to that would be that I would accept - as you know there's a judge's conference right now in Ottawa. All the Superior Court judges are here from across the province and I could, I suppose, leave the conference and maybe hear the recusation motion on - on Friday, maybe. So that - that's my preliminary points. If you - and I'll hear now from counsel and from Mr. Rancourt.

10 MR. DEARDEN: Correct, Your Honour,...

M. RANCOURT: Merci.

15 MR. DEARDEN: ...we would let you know that this Statement of Claim was issued almost three years ago and it's going to be our position at trial that part of the evidence of Mr. Rancourt's malice, it goes to the issue of aggravated damages as well, is that he's filed so many motions in this case to delay the day that Professor St. Lewis can actually get her day in Court to attempt to restore her personal and professional reputation, which in our opinion and our submission, will be it was a sneer job by - by him on her reputation. And, therefore...

20 M. RANCOURT: Monsieur le Juge, je m'objecte.

25 MR. DEARDEN: ...I would very....

30 M. RANCOURT: Est-ce que ce spin est nécessaire? Vous avez posé des questions précises pour la motion qui est devant nous et monsieur Dearden prend ce temps pour émettre un spin qui, à mon sens, est pas nécessaire et il - et risque d'être préjudiciable.

LE TRIBUNAL: Un procureur peut faire des

représentations qu'il juge appropriées pour son client. Vous avez peut-être un point que dans le moment, comme on est en train de faire du, un peu de cuisinage, c'est peut-être pas nécessaire d'aller - d'aller dans des - les arguments de fond, monsieur. Maybe we should....

MR. DEARDEN: It's necessary,...

THE COURT: But....

MR. DEARDEN: ...Your Honour, because I want to let the Court know the gravity and how egregious Professor St. Lewis thinks what was published three years ago has had on her personal and professional reputation.

THE COURT: Yeah. But isn't that a question for the jury?

MR. DEARDEN: Yes, it is, but this is what - I'm saying this, Your Honour, so that I am requesting, as a backdrop to my request and Mr. Rancourt - I would ask you to have Mr. Rancourt sit down, because I'm making my submissions.

LE TRIBUNAL: Assoyez-vous, là, Monsieur Rancourt. Puis vous - prenez les notes, hein? C'est toujours mieux d'intervenir pas - d'intervenir le moins possible pendant que l'autre partie parle, mais de plutôt répliquer par la suite. Oui?

MR. DEARDEN: I would - so in that backdrop, Your Honour, we very much want you to deal with the recusal motion and - and I'm ready to argue with right now. I'm ready to argue it right now. We do not want a delay of this trial on Monday and I can tell Your Honour that the list that I have - I had no idea that Mr. Rancourt was going to

argue that you were - had a reasonable apprehension of bias and recusal. I had no idea he was going to do that. My list was just to give you a head's up of what you were going to face in the trial. There will not be *voir dire*, Your Honour, except one, other than the recusal motion, but there's just one *voir dire*, that I submit, you need to deal with after the jury is in panel. Then after some evidence is given by Professor St. Lewis to start the trial is whether the defendant has a lawsuit by proxy contrary to the *Charter* defence in this liable action, which I've never heard of in my life because that defence, if you rule it is - there is no such defence, which I'm going to submit there isn't. Then that drastically effects the - the records that he has summoned from the five witnesses that Mr. Doody mentioned and it directly affects the examination in-chief that I may or may not have to do on those issues with Professor St. Lewis and it also drastically affects what the defendant thinks he's going to say in-chief and I - I have his Will Say here. I have those summonses here. There is so much, in my submission, irrelevant evidence that this witness thinks that - or this defendant thinks that he's going to put into this trial that you need to rule only on the lawsuit by proxy contrary to the *Charter* defence early because that dictates the other things. All the other matters....

THE COURT: What about the limitation issue?

MR. DEARDEN: The limitation defence, Your Honour,

cannot be argued until after I've cross-examined Mr. Rancourt. Now you have the - the decision to....

THE COURT: What about - yeah. Okay. And the other matters are most in his defence, like witnesses that you're challenging and...

MR. DEARDEN: Disqualification...

THE COURT: ...things of that nature.

MR. DEARDEN: ...of his experts. That happens when...

THE COURT: Yeah. Yeah. So that would be....

MR. DEARDEN: ...he puts them on.

THE COURT: That would be later on. So you're saying the only thing, assuming that I - that the recusation motion does not - is not successful, the only thing we should - your suggestion is that the only thing that we should decide are, here, is the proxy defence and - and that would be it. That - from that would flow a number of - of matters including the - the - maybe the subpoenas and things of that nature.

MR. DEARDEN: Oh, absolutely the summonses.

Absolutely expects - because we're - we're arguing that that defence is just a dressed up, another Champerty motion that was dismissed...

THE COURT: Well...

MR. DEARDEN: ...by Justice Smith.

THE COURT: ...that's fine, but that's the - you're saying that if you are successful that that would - those results would follow. Okay. Fine.

MR. DEARDEN: And it's - it's crucial, if I could

repeat, Your Honour, that this trial start Monday and that Professor St. Lewis gets her day in Court. It's been three years of dealing with almost 30 motions and it's really....

5 THE COURT: No, no, but it won't - it may not - the only way it may not proceed is if - if I recuse myself on this.

MR. DEARDEN: Well, yes.

THE COURT: That would....

10 MR. DEARDEN: And that's why, Your Honour,....

THE COURT: That could - yeah. But I mean, and that's why I addressed this first. In other words, either - we could either have this before - I suppose we could send the jury - and panel the jury, send them home for one day, I suppose, and hear the recusation motion. Purely on - on scheduling and - but, or we could send them away and have the other *voir dire* also heard is what I'm saying, if I'm not - if I don't recuse myself.

15 M. RANCOURT: Mais, Monsieur le Juge, je dois m'objecter, s'il vous plait.

MR. DEARDEN: Just - just a second.

20 THE COURT: Just - Il a pas fini encore, Monsieur Rancourt. Juste une minute.

25 MR. DEARDEN: So, Your Honour, I'm - I'm advocating strongly that you deal with the recusal motion sometime this week so that issue is dealt with...

30 THE COURT: Okay. Thank you.

MR. DEARDEN: ...before Monday.

THE COURT: Oui, Monsieur Rancourt?

M. RANCOURT: Monsieur le Juge, on peut - là je répons simplement à ce que - aux choses que monsieur Dearden viens de dire parce que je m'objecte.

Monsieur Dearden a réussi à parler du fond avant de décider quand on va entendre la motion pour se récuser. Il a - il a déjà engagé la Cour sur des questions importantes. Il a déjà commencé à mettre dans l'esprit de la Cour comment les choses vont s'organiser, comment les choses vont se passer, qui sont pas du tout comment moi je vois les choses et monsieur Dearden nous annonce maintenant qu'il y aura un seul *voir-dire* alors que sa liste de choses à discuter inclut plusieurs *voir-dire*. Ma liste de chose à discuter inclut plusieurs *voir-dire* qui doivent être vus, je pense, et ma liste inclut aussi des questions à la Cour de toutes sortes.

Maintenant, ma position - donc, je m'objecte à comment monsieur Dearden fait les choses parce que vous avez posé une question simple qui est, qu'est-ce qu'on va faire avec la motion de récusation et ma position par rapport à ça c'est qu'on doit tout d'abord faire ça avant d'engager la Cour avec tout ce genre de questions ou - parce que ce genre de question qui peuvent paraître procédurales sont plus que procédurales parce qu'elles vont me limiter dans ma façon de présenter des arguments. Elles peuvent me mettre à désavantage. Elles - sûrement que monsieur

Dearden a comme but de me mettre - de se mettre, lui et son client, à avantage et moi à désavantage. Il y a - et c'est clair que, donc, les questions procédurales sont jamais que des questions procédurales. Et donc, à mon sens, la question par rapport à une apparence de partialité doit être réglée tout d'abord.

LE TRIBUNAL: Vous êtes d'accord...

M. RANCOURT: Tout d'abord.

LE TRIBUNAL: ...tous les deux là-dessus. Première chose qu'on doit faire c'est procéder à la requête en récusation. Ça, maître Dearden est d'accord avec vous.

M. RANCOURT: Oui.

LE TRIBUNAL: C'est la première chose à faire.

M. RANCOURT: Et....

LE TRIBUNAL: La seule question à déterminer c'est - c'est que moi, ce que je posais tout simplement comme question, c'est le *timing* de cette motion-là. Est-ce qu'on fait ça cette semaine? Comme juge, je pourrais me libérer probablement jeudi ou vendredi, ou est-ce qu'on fait ça - ouais.

Qu'on fait ça juste - qu'on choisit le jury, qu'on fait ça après, puis si je me recuse, bien là on a tout fait ça pour rien. Fait que je - ouais. Donc, mais vous êtes d'accord. Il faut commencer par décider si je peux entendre la cause ou pas ou que je peux présider au procès.

M. RANCOURT: Absolument.

LE TRIBUNAL: C'est pas moi qui va décider la cause, mais si je peux présider au procès et décider les questions naturellement qui ce seront

soulevées et qui sont de la prérogative du juge du procès pendant ce procès.

5 M. RANCOURT: Est-ce que je peux poser une question de clarification, s'il vous plaît? Si jamais on choisissait un jury le lundi matin et que vous vous récusiez après, est-ce que ça invalide le choix de jury?

LE TRIBUNAL: Oui.

M. RANCOURT: Okay. Dans ce cas-là...

10 LE TRIBUNAL: Parce qu'il y aurait à ce moment-là un - un - il faudrait que je déclare un - que le - s'il y a pas d'autre juge - à moins qu'il y aurait un juge qui soit disponible, là. Un juge pourrait - pourrait, même si j'ai choisi le jury, un juge pourrait prendre - prendre la cause, mais
15 s'il y avait pas de juge, et c'est plus probable que non qu'il n'y en aurait pas - plus probable que oui qu'il n'y en aurait pas, là. À ce moment-là, il faudrait déclarer l'annulation ou
20 le - annuler le procès, parce qu'il y aurait eu - on ne pourrait pas procéder, puis on ne pourrait pas garder ce jury-là pour les prochains six mois ou quatre mois ou trois mois ça prend pour recommencer.

25 M. RANCOURT: Il y a une autre possibilité, Monsieur le Juge, si je peux me permettre, parce que monsieur Dearden vient à la dernière minute de me donner son factum par rapport à cette motion pour se récuser. Je sais pas si vous en
30 avez une copie, mais il....

LE TRIBUNAL: J'ai pas - j'ai vu que c'était là.

M. RANCOURT: Ah.

LE TRIBUNAL: Tous les deux dossiers étaient là,
le vôtre et celui de monsieur Dearden,...

M. RANCOURT: Okay. Et....

LE TRIBUNAL: ...mais j'ai rien lu moi encore, là.

M. RANCOURT: Et moi j'ai amené ce matin ce que
j'appelle "Defendant's Compendium of Argument".
C'est essentiellement un factum et avec des
évidences que je peux vous donner tout de suite
parce que vous allez....

LE TRIBUNAL: Non, non. J'ai pas besoin de ça.
On va entendre....

M. RANCOURT: Mais - mais - mais....

LE TRIBUNAL: Dans ce cas-là, on va entendre la
motion de récusation. On va entendre ça.

M. RANCOURT: Ce que - ce que je propose, Monsieur
le Juge, pour finir ma pensée,...

LE TRIBUNAL: Oui.

M. RANCOURT: ...c'est qu'on a les arguments. On
a les documents devant nous aujourd'hui. On peut
faire la motion et ça vous donne le temps que
vous allez prendre pour prendre la décision
après, mais vous pouvez entendre tous les
arguments aujourd'hui.

LE TRIBUNAL: Mhmm.

M. RANCOURT: Les deux parties ont amené leurs
factums, leurs arguments. La motion est devant
la Cour. On peut entendre cette motion
aujourd'hui, maintenant, première chose, avant de
discuter des questions procédurales qui, à mon
sens, ne doivent pas être discutées avant de
décider cette question. Ils ne doivent pas.
C'est une injustice si ça se passe comme ça, je

pense. Et donc, on est prêt aujourd'hui.
C'était une possibilité et je pense que c'est la
possibilité pour l'emploi du temps qui serait la
plus logique.

5 LE TRIBUNAL: Okay. Mais il va falloir qu'on -
qu'on - juste un dernier point avant que je
laisse la parole brièvement à Monsieur Dearden.
C'est que ce que vous dites fait du sens, mais il
10 va falloir - si j'entends la motion et que je
décide de ne pas me récuser, il va falloir
absolument qu'on ait une conférence avant lundi
de quelque sorte parce que sans ça on sait pas -
on ne peut pas avec un jury, vous savez, il faut
- faut être préparé un peu, là. On ne peut pas
15 s'en aller à tâtons là avec un jury, là. Pour
tout le monde, sans ça ce serait pas - ça sera
pas bon pour personne. On va regarder - on va -
ça serait pas efficace. Il faut être efficace
avec les gens du public aussi, là, puis il faut
20 être efficace pour tout le monde puis être juste.
Ça fait qu'il va falloir avoir une conférence,
mais - so, the suggestion is that I hear the
motion now and I - and I reserve on it maybe
until tomorrow or something like that to - and
25 then we can have a conference on - on the
preliminary matters, if I don't - if the motion
is not - is dismissed.

30 MR. DEARDEN: I agree with that, Your Honour. I
think - I just want to make a - a correction to
something Mr. Rancourt may have misunderstood.
He thinks that what my previous remarks were
saying that there's only going to be one voir

dire. Not at all. I'm just saying that it's only one *voir dire*....

THE COURT: The timing of the *voir dire*.

MR. DEARDEN: Yeah. I - I maintain all the *voir dire* that...

THE COURT: Yes. Yeah. Yeah.

MR. DEARDEN: ...I have in my expeditions.

THE COURT: Yeah. Yeah. Uh-huh. I noted that. I think he - yeah.

M. RANCOURT: Je - j'ai....

LE TRIBUNAL: Vous comprenez, c'est pas une question - lui disait tout simplement qu'on n'a pas besoin de faire tous les *voir-dire* avant - avant de commencer le procès et qu'on - qu'il y a juste un *voir-dire* qui est absolument crucial. Là-dessus, je déciderais en temps et lieu s'il y a d'autres *voir-dire* qui doivent être entendus avant que le jury entendent la cause, si je ne me récusé pas.

M. RANCOURT: Oui. Ma position est qu'il doit y avoir certains de mes...

LE TRIBUNAL: Okay. Mais on verra ça....

M. RANCOURT: ...*voir-dires*...

LE TRIBUNAL: On - on....

M. RANCOURT: ...qui sont entendus avant.

LE TRIBUNAL: On - on verra ça une fois que j'aurais décidé si je me récusé ou non.

D'accord. Donc, je vais entendre votre - laissez-moi donc d'abord - j'ai pas regardé ça là ici du tout.

MR. DEARDEN: Perhaps, Your Honour, we should take a 15-minute break...

THE COURT: Yeah.

MR. DEARDEN: ...to give Your Honour time to read...

THE COURT: Yeah.

MR. DEARDEN: ...the materials.

THE COURT: I'm just trying to locate the relevant - okay. There's a Notice of Motion by the defendant and there's a factum from the plaintiff.

M. RANCOURT: Et il y a un troisième document qui est mon factum, essentiellement, que...

LE TRIBUNAL: Ah.

M. RANCOURT: ...je vous donne tout de suite.

LE TRIBUNAL: Okay. Vous en avez donné une copie, oui?

M. RANCOURT: Oui.

LE TRIBUNAL: Okay. Okay. Okay. Let's take - well....

M. RANCOURT: Et juste pour vous...

LE TRIBUNAL: Oui.

M. RANCOURT: ...simplifier la vie, Monsieur le Juge, j'aimerais juste vous parler de mon factum, parce que j'ai pas eu le temps de le lier avec des onglets, mais vous voyez il y a un onglet...

LE TRIBUNAL: Oui.

M. RANCOURT: ...et ça donne une liste des - des attachements et il y a le - le numéro de page pour chaque attachement...

LE TRIBUNAL: Ah, bon.

M. RANCOURT: ...même s'il n'y a pas d'onglet. Alors, je m'excuse pour ça.

LE TRIBUNAL: C'est bien. C'est bien ça.

MR. DOODY: And, Your Honour, with your permission, I will withdraw, and I'm available anytime this week for the - for the conference and I'm sure Mr. Dearden will let me know.

MR. DEARDEN: Yes, Your Honour.

THE COURT: Okay. We'll take half an hour.

R E C E S S

U P O N R E S U M I N G:

LE TRIBUNAL: Monsieur Rancourt, je vais entendre vos représentations.

M. RANCOURT: Merci, Monsieur le Juge.

LE TRIBUNAL: Les interprètes sont pas là encore? Pas trop bon. Ah. Ah. Les voilà.

M. RANCOURT: Je vais attendre qu'on m'avise.

INTERPRÈTE BORRIS: Monsieur le Juge, désolé, mais les interprètes ont pas eu un appel pour revenir, alors on - on s'excuse.

LE TRIBUNAL: Ah, bon. Okay. On avait dit une demi-heure, mais, okay. Il faudrait les rappeler, donc, Madame la Greffière.

GREFFIÈRE DU TRIBUNAL: Oui. Je le sais. La prochaine fois. Ils sont prêts.

M. RANCOURT: Oui? C'est bon?

LE TRIBUNAL: Est-ce qu'on est prêt?

GREFFIÈRE DU TRIBUNAL: Oui.

M. RANCOURT: Okay. Merci.

LE TRIBUNAL: Allons-y.

M. RANCOURT: Alors, je m'excuse, là, je mets mes lunettes de lecture. Je vous verrai pas très bien, mais je dois lire mes documents.

Donc, je vais - je vais suivre, essentiellement, mais à quelques exceptions, là, le Compendium of Argument que vous avez devant vous qui - qui a été servi et préparé.

Donc, premièrement, je voudrais dire que le 25 juillet 2012, j'ai écrit au juge Hackland et c'est à l'onglet 1 de mon document. Et cette lettre disait, entre autres - aux paragraphes 18, 19 et 20 de cette lettre disait:

"Also given the central place of the University of Ottawa law school in the Ottawa legal community, I'm concerned that a reasonable apprehension of bias is nearly impossible to be avoided with a bilingual judge from East Region. I therefore seek that a bilingual judge from a judicial [reason -] region other than East Region and having no connections with the University of Ottawa or the BLG & Gowlings law firms and no ties to Mr. Allen Rock be assigned to the proceedings using video conference and/or conference call technology."

Et au paragraphe 20, je disais:

"I request your guidance in the best way to achieve this. In my view, travelling outside of Ottawa with all documents, without a - would be a prohibitive barrier to access."

5 Et le juge Hackland m'a répondu par
l'intermédiaire de madame Kim McKinley le 30
juillet 2012 et la lettre disait, entre autres -
c'est au - à l'onglet 2 de mon document. Donc à
la page 11 de mon document. Disait, entre
autres:

10 "Any motions will be heard by the judge
assigned by him. If you have any
legitimate concerns about the presiding
judge's impartiality, you should follow
the normal process of bringing a motion
to have the judge recuse himself or
herself."

15 Donc, le juge Hackland a décidé de ne pas, de
façon générale, accepter qu'on trouve un juge qui
sans question n'a pas de lien avec l'Université
d'Ottawa, mais il a plutôt choisi que ça se fasse
20 cas par cas. C'était la réponse du juge
Hackland, donc le 30 juillet 2012.

25 Ensuite, il est clair qu'il y a des précédents
ici à Ottawa où l'Université d'Ottawa est un
institution très importante et très grande, qui a
des liens avec la communauté légale, et il est
clair, parce que on voit ici, j'ai - j'ai mis à
mon onglet 3, qui est à la page 12, plusieurs
30 documents. Entre autres, il y a le Juge McNamara
qui, le 18 octobre 2012, a fait un jugement pour
se récuser. Et c'est écrit à la main et ce
jugement lit - et je l'ai - je l'ai tapé dans mon

argument ici, là, le mieux possible. Il y a quelques petits endroits où je n'arrivais pas à lire. Ça dit, "At the outset of the hearing, Mr. Christie," qui était l'avocat d'un des parties, "on behalf of his client," J'imagine le C, ça veut dire ça:

"...indicated his clients were uncomfortable with this action being heard by myself as I am a graduate of the University of Ottawa."

Ensuite il y a une petite partie que j'arrive pas à lire. Quelques mots. Ensuite, ça dit, "After considering the matter for some time, I had agreed to recuse myself in the..." Là il y a un mot ou deux que j'arrive pas à lire. "...circumstances of this case." Et il termine avec, "Matter is," je pense:

"...postponed to date to be announced to trial coordinator. Judge who hears the matter should not be a U of O graduate."

Donc, ça c'était la décision du juge McNamara, le 18 octobre 2012.

LE TRIBUNAL: Le mot....

M. RANCOURT: C'était une cause....

LE TRIBUNAL: Le dernier mot que vous ne pouvez pas lire, là,...

M. RANCOURT: Oui?

LE TRIBUNAL: ...c'est 'unique'. Est-ce que vous savez c'était quoi les 'unique' circumstances of

this case?

5 M. RANCOURT: Ah, okay. Je vais - unique. Okay. Unique. Je sais quelque chose à propos de ce cas. J'allais justement le mentionner. C'était un cas où l'Université d'Ottawa était une partie à la cause et c'était un cas où on demandait un très très grand montant d'argent en réparations parce que des médecins avaient été congédiés par l'Université d'Ottawa. Donc, c'était - je pense 10 qu'ils demandaient 30 millions dollars en réparations pour perte de - de carrière, et cetera. Et il y avait des éléments de diffamation là-dedans, je pense. Et donc c'était une assez grosse cause dont on a parlé dans les 15 medias à l'époque.

LE TRIBUNAL: Merci. Merci.

20 M. RANCOURT: Okay. Et donc - et donc, c'est un cas où l'Université était partie à la cause et je vais adresser cette question-là, cette différence, un peu plus tard dans mon argument.

25 Il y a aussi eu la même date, c'est-à-dire le 18 octobre 2012, il y a eu un autre *endorsement* à propos de la même - de la même cause par Master Calum MacLeod et cet *endorsement* se lit comme suit. C'était tapé cette fois-ci:

30 "This matter was scheduled before McNamara, J. for two-day motion. At the outset of the motion, at the request of one of the parties, the judge recused himself because he is a graduate of the University of Ottawa."

Ensuite ça dit:

"On consent, the motion is adjourned to
December 4 and 5, 2012. The regional
senior judge is requested to review the
matter and to assign a judge who is not
a graduate of the University of Ottawa."

Et c'est moi qui a ajouté le - l'emphase, là,
dans mon document.

Donc, voilà des précédents que j'ai pu trouver
qui sont spécifiques à la région d'Ottawa et
spécifiques à l'idée qu'un juge pouvait avoir un
diplôme de l'Université d'Ottawa.

Et je n'ai - maintenant, cette cause - dans cette
cause-ci, le - l'Université n'est pas, proprement
dit, une partie à la cause, mais l'Université est
partout dans la cause présente devant nous. Par
exemple - et là je vais vous montrer un autre
document que vous avez déjà, mais je vais - je
vais le montrer. J'ai - j'ai signalé ici. Ça
c'est la liste de monsieur Dearden qu'on vous a
donné ce matin ou hier qui s'appelle "Trial
Management Conference Issues Plaintiff" et j'ai
souligné en rouge la partie que j'aimerais vous
montrer et j'en donne une copie à monsieur
Dearden. Et vous voyez ici que le deuxième point
que Monsieur Dearden veut soulever, c'est cette
question de "lawsuit by proxy."

Eh bien, dans mon Statement of Defence, dans le

5 plaidoyer, l'argument est que c'est un lawsuit by proxy par l'Université d'Ottawa et l'Université d'Ottawa est nommée dans - dans ma défense, dans mon Statement of Defence, explicitement, à plusieurs paragraphes.

10 Donc la première chose que monsieur Dearden veut que vous décidiez, qu'il a expliqué ce matin qui est une question très importante, qui pourrait éliminer une de mes défenses entièrement, c'est explicitement à propos de l'Université d'Ottawa, qui serait donc la cause de cet abus de processus, ça serait un lawsuit by proxy dû à l'Université d'Ottawa.

15 Donc c'est très - donc - donc là on voit que c'est dans les plaidoyers et je vais continuer à expliquer en plus de détails comment c'est dans le plaidoyer, dans mon Statement of Defence. Par exemple, j'ai mis à l'onglet 4 certaines pages de mon Statement of Defence. Donc l'onglet 4 commence à la page 16 de mon document. Et vous voyez, j'ai encerclé le paragraphe 40 de mon Statement of Defence et dans ce paragraphe 40, je dis - je parle de - et je cite, "Alleged unethetical behaviours of president Allan Rock and VP academic Robert Major" qui sont des exécutifs de l'Université d'Ottawa.

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30 Ensuite, si vous regardez les paragraphes 61 - le para - si on va au paragraphe 61, qui est à la prochaine page de l'extrait que je - que vous

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avez devant vous, dans ce paragraphe 61, ainsi
que - ça c'est l'affaire de lawsuit by proxy, le
paragraphe 61, mais c'est dans une section qui
parle à propos du fait que c'est l'Université
d'Ottawa dont on parle et on voit ça dans les
paragraphe 66 et 67. Alors dans ces trois
paragraphe 61, 66 et 67, on peut voir que
l'argument est que c'est un lawsuit by proxy par
l'Université d'Ottawa, que c'est une utilisation
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impropre des fonds publics, que c'est une action
qui est impropre si l'université est en train de
financer la plaignante puisque la plaignante veut
donner la moitié de dommages punitifs à
l'Université d'Ottawa, ce qu'elle dit dans son
Statement of Claim, et aussi ces paragraphes
disent que l'action est impropre, *improper*,
"intended to punish, intimidate and silence the
defendant" qui est un critique de l'Université
d'Ottawa et que donc je dis c'est "frivolous
20
vexation or an abuse of process."

25
Donc, ma défense c'est qu'il y a un abus de
processus parce que par l'intermédiaire de
l'Université d'Ottawa en finançant l'action, on
veut de façon pas raisonnable, non-justifiée, par
abus de processus, on veut punir, intimider et
mettre au silence un critique très prononcé de
l'Université d'Ottawa. Alors on voit que c'est
dans la cause qui est devant la Cour. Et, en
30
plus, pour expliquer à quel point l'Université
est présente dans cette cause, il y a les
éléments suivants qui sont très importants.

5 Les avocats sont reliés à l'Université d'Ottawa.
Monsieur Dearden lui-même est un professeur
adjoint à l'Université d'Ottawa. Monsieur Doody
que vous avez vu ce matin représente l'Université
d'Ottawa et s'est présenté ici. Il ne m'a pas
dit d'avance pourquoi il se présentait, qu'il
allait se présenter. Il ne m'a pas informé de
ses propos. J'ai - il représente certains
10 témoins. J'ai émis des - des *summons* à ses
témoins et il ne m'a pas donné d'information
comment il est - il allait s'objecter à ces
summons. Je lui ai demandé par lettre. Il a
refusé de me donner des informations. On peut
15 voir que monsieur Doody n'agit pas de façon
neutre envers les témoins qu'il représente, mais
plutôt dans l'intérêt de l'Université d'Ottawa.
LE TRIBUNAL: Mais - mais c'est pas vraiment
pertinent à savoir si le tribunal peut agir de
20 façon impartiale.

M. RANCOURT: Juste....

MR. DEARDEN: Your Honour, I just wanted to put on
the record that I object to Mr. Rancourt making
reference to the fact that I teach at the
25 University of Ottawa. It's not in the record
and, secondly, the same with what he's telling me
about Mr. Doody. It's not in his record. So I
put those objections.

M. RANCOURT: Non, c'est dans le record, Monsieur
- Monsieur le Juge....

LE TRIBUNAL: Mais....

M. RANCOURT: Monsieur - monsieur Dearden.

LE TRIBUNAL: Oui. On se....

M. RANCOURT: Oui.

LE TRIBUNAL: Moi je pense que ç'a aucune...

M. RANCOURT: Okay.

LE TRIBUNAL: ...pertinence. C'est certain que les avocats sont pas impartiaux. Ça, sont jamais impartiaux. Ils agissent pour des gens. Fait que c'est pas ça qu'on doit décider ici ce matin, là.

M. RANCOURT: Je suis complètement d'accord, Monsieur le Juge, avec ce que vous venez de dire. Mon seul but était de expliquer les liens étroits qu'il y a avec tous les aspects de ce processus avec l'Université d'Ottawa. C'était ça mon seul but, Monsieur le Juge. Par exemple, tous les témoins, une grande grande majorité des témoins, et de mon côté et du côté de la plaignante, ont - sont soit des professeurs à l'Université d'Ottawa, sont des étudiants ou des gradués d'Université d'Ottawa, et cetera, et à la page 4 de mon argument, j'ai fait un tableau de tous les témoins de la plaignante et tous les liens. La grande majorité ont des liens avec l'Université d'Ottawa. Donc c'est....

LE TRIBUNAL: Mais arrive - arrivons....

M. RANCOURT: C'est pour montrer à quel point....

LE TRIBUNAL: Arrivons au cœur de l'argument, c'est pourquoi est-ce que moi je ne pourrais pas entendre cette - de façon juste et impartiale?

M. RANCOURT: Oui. Allons-y. Alors, je m'excuse de cette divergence. C'était pour montrer les liens intimes là, c'est partout partout. Une

institution qui...

LE TRIBUNAL: Oui.

M. RANCOURT: Qui est partout.

LE TRIBUNAL: Et ça, j'imagine, ça va faire partie de votre - intégrale de votre question, votre défense relativement à *lawsuit by proxy*, là, toutes ces questions-là.

M. RANCOURT: Alors,....

LE TRIBUNAL: C'est pas directement relié à la question que j'ai à trancher ce matin.

M. RANCOURT: Oui. Alors pour venir à la point - le - pour l'amener à la question qui est directement reliée, voici une façon que je peux le dénoncer. Les allégations que je vais faire contre l'Université d'Ottawa peuvent affecter sa réputation et donc la valeur et la réputation de ses bourses aux étudiants, auquel vous donnez de l'argent régulièrement.

Donc, il y a, à mon sens, légalement, une apparence d'un intérêt commun entre le juge dans ce cas-ci et l'Université d'Ottawa parce que je pense que j'ai fait le point assez clairement, là. Il y - il y a donc une apparence de - de - d'un problème et ça implique de l'argent.

Justement, donc, je peux en venir avec les choses que j'ai pu trouver sur l'internet au sujet des liens qui existent entre vous, Monsieur le Juge, et l'Université d'Ottawa. Je n'ai pas - j'ai vérifié autant que j'ai pu, mais essentiellement ce sont des choses qui viennent de l'internet. Et donc,....

5 LE TRIBUNAL: Non, on - on va présumer que c'est tout vrai ça pour les fins de votre - je suis un gradué de l'Université d'Ottawa et j'ai contribué des argents à la faculté de droit de *Common Law* Université d'Ottawa. On a pas - vous avez pas besoin de prouver ça, là. C'est un fait.

M. RANCOURT: Merci.

10 LE TRIBUNAL: Des dons pour comme - à l'Université d'Ottawa. Oui.

15 M. RANCOURT: Merci. Donc, tous vos diplômes universitaires sont de l'Université d'Ottawa et dans l'apparence des faits, on a tous un lien avec notre *alma mater*. On a tous un - un souvenir de nos jeunes jours, un lien émotif, intime avec l'Université où on a passé des moments si importants. Dans - dans ce cas présent, tous les diplômes universitaires sont de cette même Université d'Ottawa. Il y en a deux donc diplômes. Un en histoire et un en droit.

20 Les dons en question que j'ai mis de l'évidence pour ces dons-là à l'onglet six, qui est un extrait qu'on peut trouver sur l'internet et qui nomme ces dons-là comme étant dans la catégorie « annuel ». 3.0 Annuel. Donc ça suggère des dons réguliers. Par exemple, en - les données étaient très limitées, mais en 2012, il y a eu deux dons de ce type-là qui étaient de 500\$ chacun et c'était envers des - un était envers une bourse dans la section de *Common Law* à l'Université d'Ottawa et l'autre était envers un Ontario Trust for *Student Support for the Faculty*

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of Law - Common Law section. D'après ces données qui viennent d'une demande d'accès à l'information. J'ai - j'ai pu vérifier que ça venait d'une demande d'accès à l'information. Donc ça c'était le document à l'onglet six.

Ensuite, il y a aussi le document à l'onglet sept qui est une certaine page d'une publication qui vient de la section de Common Law de l'Université d'Ottawa de - du printemps 2009 où vous êtes listé comme un donateur dans la période entre mai 2008 et avril 2009. Donc, ça c'est les quelques choses que j'ai pu trouver.

Ensuite, il y a aussi la question finalement que j'ai trouvé un document sur l'internet qui semble indiquer qui est - que vous étiez partenaire avec le juge Robert Smith dans une firme d'avocats qui s'appelait Charbonneau Smith, qui agissait à Hawkesbury et donc, ça suggère que vous étiez deux des partenaires dans cette firme et ça c'est un problème, Monsieur le Juge, en apparence parce que même - même aujourd'hui on avait prévu de parler d'un *pre-trial conference endorsement* du juge Smith et de l'interpréter et de - de - de voir dans quelle mesure il a été suivi ou pas. Donc, c'est des questions actives de la cause devant nous qui sont des décisions du juge Smith avec qui vous avez eu, il semblerait, une relation professionnelle très proche et privilégiée à une certaine époque et ce juge, ce même juge, Robert Smith, est exclu comme étant un

5 juge. Les règles de la Cour reconnaissent l'importance d'exclure l'influence du *case management judge* du procès. Il est exclu de ça, mais il est quelqu'un avec qui, en apparence, vous avez eu une relation très proche professionnelle. Vous avez travaillé dans la même ville. Vous étiez dans le même cabinet que vous avez fondé et maintenant, vous êtes deux juges dans la même Cour et qui ont eu des affaires avec la même cause et dont les jugements d'un juge doit être évalué et considéré par le juge de procès. Alors, c'est une situation qui, en apparence, d'après moi, en plus de tout le reste, donne lieu à un problème de - de crainte raisonnable de partialité.

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Donc, bien - et en plus, il est suffisant - c'est peut-être un de mes derniers points, mais un autre juge a trouvé que c'était suffisant ici à Ottawa de se récuser simplement parce qu'il avait un diplôme de l'Université d'Ottawa. Alors que dans ce cas-ci, on a tous les diplômes universitaires qui viennent de l'Université d'Ottawa. On a des - des dons annuels ou réguliers il semblerait à l'Université d'Ottawa et on a un lien intime avec le juge qui a été le *case management judge* et qui a fait plein plein de - de règlements qui ont établi les conditions du procès. Alors, ça - ça c'est les arguments principaux pour lesquels je crois qu'il y a une crainte raisonnable de partialité.

Oh, il y a un autre. Non, j'ai oublié un point,

Monsieur le Juge. Excusez-moi.

5 Mon dernier point est que - et c'est relatif à
cette lettre que j'avais envoyée à monsieur
Dearden. Donc je vous donne une copie de cette
lettre. C'est une lettre du 5 mai que j'ai
envoyée à monsieur Dearden et dans cette lettre,
j'ai cité à monsieur Dearden la règle des règles
de procédure qui est la règle 1.09 et j'ai - et
10 j'ai mis la règle explicitement dans la lettre et
j'ai dit - la règle se lit donc :

15 "When a proceeding is pending before
the court, no party to the proceeding
and no party's lawyer shall communicate
about the proceeding with a judge,
master or case management master out of
court, directly or indirectly,
unless, (a) all the parties consent, in
advance, to the out-of-court
20 communication; [ou] (b) the court
directs otherwise."

25 Et j'ai ensuite dit dans cette lettre, "I advise
you that you acted in clear violation of rule
1.09 by your letter dated and sent to Justice
Michel Charbonneau on May 2nd" qui est attaché à
cette lettre. A - j'ai dit, "(A) Justice
Charbonneau is the trial judge for the trial on
the action" et cetera. "(B) I did not consent
nor was I consulted in advance to your out of
30 court communication with Justice Charbonneau" et
"(C) the court did not direct otherwise and did
not seek submissions from the parties prior" -

avant la lettre du 5 mai que j'ai envoyée à monsieur Dearden.

Et ensuite, au paragraphe 3, je dis :

"Your letter to Justice Charbonneau is intended to create a prejudicial outlook in which exclusively the plaintiff's concerns are to be addressed at the May 7th trial management conference to determine the trial proceedings and intended to direct the Judge's attention to select trial documents chosen by the plaintiff."

Et ensuite, je dis au paragraphe 4 :

"I intend to alert the Court to this matter at the first occasion to do so. Furthermore, you have disregarded rule 1.09 previously with Justice Smith and I made submissions on the record at that event."

Et la lettre en question que monsieur Dearden avait envoyée est datée du 2 mai et est ajoutée à ma lettre et est attachée à ma lettre et on voit dans sa lettre qu'il pose sous forme de question, mais il a dirigé la cour vers toute sortes de documents et - et qu'il pose que des questions qui sont d'intérêts à son client sans jamais ne m'avoir consulté, et cetera. Et donc, j'estime que c'est une - c'est un bris à la règle, dans

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mon esprit très clair et ce matin, Monsieur le Juge, vous avez remercié le - l'avocat, monsieur Dearden, d'avoir envoyé cette lettre, chose qui m'a dérangé et chose que - parce que ma compréhension des règles c'est que c'est - ce n'est pas normal de - de - d'avoir ce genre de lettre avant se présenter devant la cour. Que ça serait à la cour de regarder les documents et de décider si elle a besoin de plus de détails, et cetera, et que donc il y a - il y a un apparence d'un problème. Peut-être que je me trompe. Je ne connais pas les pratiques de cette cour en détail, mais je lis les règles et je les comprends du mieux que possible et pour moi, ça ajoute un élément d'un apparence - d'une apparence de partialité. Merci, Monsieur le Juge.

20
LE TRIBUNAL: Merci bien. No, I won't - I won't need to hear from you, sir.

MR. DEARDEN: Your Honour,....

THE COURT: I won't need to hear from you.

25
MR. DEARDEN: No, I - I'm not being obstinent(ph), Your Honour. My concern, Your Honour, is that he's got on record accusations that I breached rule 1.09 on a letter that I CC'd him on and I'm wondering if you could permit me to...

THE COURT: Yeah. Go ahead then if....

MR. DEARDEN: ...just put on the record that....

30
THE COURT: If it's a question that you want to put something on the record,...

MR. DEARDEN: Yeah.

THE COURT: Go ahead.

5 MR. DEARDEN: So May 2nd, 2014, Your Honour, is the letter that I wrote to you and it is CC'd to Mr. Rancourt. If the party were to just write the judge and not CC the other party, there would be something wrong with that, but I CC'd him and he didn't draw your attention to the fact that the first line of my letter, I said in paragraph 1,

10 "We have a trial management conference scheduled for May 7, 2014 at 9:30 a.m. In order to expedite matters, would it be helpful if I provided you a list of matters to discuss at the trial management conference?"

15 My intention was purely to avoid delay when the jury was sitting. Let's deal with matters before the trial starts. We do that all the time and - and it was a question to you and you responded as to what you wanted. There is no prejudice created whatsoever and actually I say, thank goodness that I wrote this letter because Mr. Rancourt was sitting on 27 issues that he was going to bring up during the trial. Can you imagine the delay with the jury in panel that we have them sitting outside all the time when he had to have had those - that list for a week before I sent the letter and he was sitting on it, not alerting us to those issues.

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30 M. RANCOURT: Je pense que monsieur Dearden vient de m'accuser d'être malhonnête, ce qui est vraiment pas acceptable.

LE TRIBUNAL: Assoyez-vous, Monsieur Rancourt.

M. RANCOURT: Merci.

MR. DEARDEN: And Your Honour, I....

LE TRIBUNAL: Et vous l'avez accusé de briser la
règles, puis là il répond à votre accusation en
disant que vous, vous n'avez - vos
représentations sont pas justes aussi. Bon, on
est pas pour - allez-y.

MR. DEARDEN: The - the other thing I....

THE COURT: Anything further? Yeah.

MR. DEARDEN: I want to put on the record, Your
Honour, in terms of the endorsement of Mr. -
Justice McNamara. It's kind of interesting that
in paragraph 4 of his compendium, the two
ineligibles - the two ineligible in his
transcription of the hand written endorsement was
one word that you interpreted and I interpreted
as well is - is unique circumstances. So after
considering the matter for some time, I had
agreed to recuse myself in the unique
circumstances of this case.

And the other ineligible was at the end of the
sentence. Clients were comfortable with this
action being heard by myself as I am a graduate
of the University of Ottawa. And then he says,
ineligible. Well, I can read those words and
those words are quite significant as how
different that case is which is, I am a graduate
of this university - of the University of Ottawa,
the main defendant. The 'D' is what we use as
short form for defendant. The main defendant. U
of O is not the main defendant here. So, anyway,

I just wanted to point out and put on the record that Mr. Rancourt's ineligibles actually are eligible and that case is quite different and - and I adopt...

M. RANCOURT: C'est dans l'oeil de celui qu'il dit.

MR. DEARDEN: Your Honour, I adopt all of my submissions that I have in my factum and put those on the record in the factum that I - I filed today. Thank you.

M O T I F S D E L A D E C I S I O N

CHARBONNEAU, J. (Oralement):

Je vais rejeter la motion de monsieur Rancourt qui demande que je me récuse. Monsieur Rancourt base sa demande sur trois faits qu'il dit appuyer sa position, qu'il a raison d'être inconfortable avec le fait que je ne serais pas impartial si j'entends cette cause.

Premièrement, le premier fait, c'est que je suis un diplômé de l'Université d'Ottawa. Il a bien raison de dire qu'en 1971 j'ai gradué avec un degré en histoire de l'Université d'Ottawa et en 1974, j'ai obtenu mon degré en droit de la faculté de *Common Law* d'Université d'Ottawa.

Il a aussi bien raison de dire que j'ai été un associé à Robert Smith, qui est aujourd'hui le juge Smith de 1983 jusqu'à 1997, quand j'ai été nommé juge à cette cour.

5
Troisièmement, dont ce troisième fait - en fait, il y a un quatrième là. Troisième fait qui est personnel à moi, c'est que j'ai, à travers le temps, remis des argents à l'Université d'Ottawa comme dons périodiquement à l'Université d'Ottawa, plus particulièrement la faculté de *Common Law*.

10
La quatrième chose qui n'est pas directement personnelle mais c'est le fait que le juge Smith a dans les dernières années, a eu la gestion de cette cause et qu'il a fait un certain nombre de décisions pour amener à bien ultimement le procès qui doit commencer lundi prochain.

15
La question, là, centrale ici c'est, est-ce que ces faits-là connus et pleinement appréciés par une personne objective, bienpensante, connaissant de tous les détails ici pourrait de façon
20
raisonnable l'amener à penser que le juge ne serait pas impartial, que je ne serais pas impartial dans cette cause ici, tout en examinant la chose de façon pratique, réaliste et après avoir considéré la question de façon
25
consciencieuse, puis pleinement objective.

30
Le fait d'avoir été diplômé de l'Université d'Ottawa dans les années '70, je ne vois pas comment une personne objective - le personne que j'ai décrite pourrait avoir un doute - même un doute sur mon impartialité à entendre une cause, la cause présente.

5 Le fait que j'ai fait des dons, les anciens gradués d'Université font des dons régulièrement à leur *alma mater*. Une personne raisonnable regardant ça ne penserait pas que ceci pourrait amener l'impartialité basé sur le test que je viens de mentionner.

10 La même chose concernant le fait que j'ai été associé, partenaire d'affaire avec le juge Smith jusqu'en 1997, au moment de ma nomination. Le juge Smith a fait son travail. Ça fait très longtemps que j'ai été associé avec lui. Je ne suis pas au courant de ses décisions autre que ce
15 que j'en entendrais bien peut-être parler si ça devient pertinent. Mais encore là, c'était des décisions sur des matières interlocutoires ou peut-être sur des questions de procédure pour pouvoir mieux acheminer le procès.

20 Et donc, je ne vois pas non plus comment même en les mettant tout ensemble ces choses-là, vraiment une personne bienpensante, réaliste, pratique, objective en viendrait à la conclusion qu'il -il
25 ya peut-être une probabilité que j'aborde ce procès de façon partielle.

30 Il ne faut pas oublier non plus que c'est un procès avec jury. Je n'aurais pas à décider des questions de faits ici. J'aurais à décider certainement de toutes les questions d'admissibilité, des questions de droit et

5 j'aurais à donner des instructions en droit au jury. Toutes ces questions sont des questions qui sont tout à fait du ressort d'un appel et la Cour d'appel peut les revoir, les questions de droit, les questions de décision sur l'admissibilité et ainsi de suite.

10 La décision du juge McNamara, je dois dire, pour commencé que j'ai très peu d'information sur cette cause. Il emploie le mot 'unique', des circonstances uniques. Je ne sais pas vraiment ce qu'étaient les circonstances uniques. Je dois dire que si j'avais entendu cette cause et si - que si la décision du juge McNamara c'était qu'il devait se retirer du simple fait qu'il avait gradué de l'Université d'Ottawa, je ne serais pas d'accord avec lui. Ce simple fait ne pourrait certainement pas donner matière à une

15 appréhension raisonnable par une personne bien pensante. Je ne suis naturellement pas lié par cette décision, mais je peux voir par l'usage du mot « unique » et ainsi de suite que ce n'est pas le - sans doute les mêmes faits, donc c'est tout ce que je peux dire à propos de cette décision.

20 Ici, la cause est entre deux individus.

25 Il est évident qu'il y a à l'arrière-plan des allégations de la part de monsieur Rancourt que l'Université est impliquée au moins

30 indirectement, sinon directement. Il y a eu des décisions dans le passé relativement à ça dans un - si je comprends bien ce qu'on réfère dans le

factum de la demanderesse, des références à des décisions. Ils ont été faits relativement à une motion par monsieur Rancourt et tout se serait rendu à la Cour d'appel. Il est à noter que la Cour d'appel a brièvement adressé la question de la soi-disant partialité du juge Beaudoin parce que ça avait été soulevé par monsieur Rancourt et la Cour d'appel dit que le juge Annis avait raison de dire que le juge Beaudoin n'était pas partial du simple fait que son fils avait été un avocat dans le bureau pour - qu'il travaillait pour l'Université d'Ottawa et qu'aussi il avait - cette firme avait mis de côté un fond quelconque à la mémoire de son fils décédé.

La question qui est soulevée relativement à des allégations que l'Université d'Ottawa, ce qu'on a appelé là cette *lawsuit by proxy*, il semblerait que c'est quelque chose qui est soulevé par monsieur Rancourt dans cette plaidoirie et que, à un moment donné, il serait question de déterminer la pertinence de tout cela, mais pour les fins de cette demande en récusation, ce n'est pas vraiment pertinent à ma décision. L'action demeure une action entre madame St-Lewis et monsieur Rancourt pour libelles diffamatoires.

L'Université, on allègue, peut peut-être avoir certains intérêts. Je ne sais pas. Mais même si l'université était liée, l'institution elle-même était liée à cette action, est-ce qu'une personne raisonnable penserait qu'un juge qui a gradué au

début des années '70 de l'université et comme ancien étudiant contribue, tente d'aider la faculté de droit en donnant des dons, ce que tout le monde fait, ce que beaucoup beaucoup d'anciens font, naturellement, pour soutenir, continuer les vocations de la section de Common Law, est-ce quelqu'un de raisonnable pourrait penser que le juge qui a gradué de cette université pour ce simple fait deviendrait ou qu'il aurait une appréhension raisonnable et objective de l'impartialité ou de manque d'impartialité.

Donc si, même si j'avais à décider - si c'était purement une action contre l'université, je ne vois pas - faudrait qu'il y aille des faits pas mal plus - qui lieraient vraiment plus le juge à l'université au moment où tout se passe. Mais dans ces faits-ci, je ne le vois pas du tout. Je ne peux pas - ça serait de me - ça serait, en fait, pour un juge de se désister purement sur ces considérations-là, ça serait vraiment pas remplir son devoir ici de voir à ce que la cause procède et ça serait trop facile de - ça serait de vraiment - et ça serait manquer en ce devoir de juge, si c'était seulement le fait qu'il est gradué et qu'il a contribué des dons à l'université.

Dernier point qui est soulevé c'est que maître Dearden a enfreint la règle 1.09 en faisant parvenir une lettre à mon cabinet, à mes *chambers* sans demander la permission au préalable à

monsieur Rancourt. Dans toute règle de procédure, il faut regarder quel est l'esprit de la règle. On ne veut absolument pas qu'une partie, alors qu'il y a un procès qui est en cours, qu'une partie seule communique avec un juge pour discuter de la cause. C'est ça qui est l'esprit de la règle. Maintenant, le fait que quelqu'un attire l'attention au juge et fait une demande pour que - et ce qu'il serait approprié de faire une conférence de quelque sorte en préparation du procès ou pour faciliter certaine chose dans la procédure et ainsi de suite et qu'il en fasse part par copie à la partie adverse, ça se fait régulièrement. Ça n'attaque pas l'esprit de la règle. S'il y a quoi que ce soit, si c'était une lettre qui disait, je veux discuter de la cause et que le juge dit, « Oui, venez discuter de la cause » sans que - il y a pas question que là, ça serait un enfreindre la règle. Mais lorsque, avec avis à l'autre côté, on dit ça serait peut-être une bonne chose qu'on aille une rencontre tous les deux parties et le juge pour pouvoir discuter de procédure, discuter de comment on va procéder la semaine prochaine avec le jury et ainsi de suite. Comme j'ai dit, moi je ne connaissais rien à propos de cette cause. Je remercie vraiment, Monsieur Dearden, d'avoir pensé de communiquer avec moi de façon à ce que maintenant j'ai les deux parties qui m'ont adressé plusieurs points à être discutés et vraiment ç'aurait été simplement un charivari incroyable si on avait été ici lundi matin avec

St. Lewis c. Rancourt
Motifs de la décision

un tableau d'au-dessus 100 personnes pour choisir un jury sans qu'on aille au moins retracer les grandes lignes de certaines questions et il semblerait qu'il y en a plusieurs questions de façon à ce qu'on puisse procéder de façon ordonnée, efficace.

Pour tous ces motifs, donc, la motion de monsieur Rancourt est rejetée.

(Copie originale signée)

L'Honorable Juge Charbonneau

LE TRIBUNAL: Donc, now we should fix a time....

MR. DEARDEN: Your Honour,...

THE COURT: Yeah?

MR. DEARDEN: ...could I, for the - add to the record the May 2nd, 2014 letter that I did write you, so that the record is complete. I - I only have one and I - I marked it, but I want the letter in the - in the record along with Mr. Rancourt's material, please.

M. RANCOURT: Cette - cette lettre est déjà attachée à ma lettre que je vous ai déjà donnée.

MR. DEARDEN: Oh, is it?

M. RANCOURT: Oui.

MR. DEARDEN: It's in the....

M. RANCOURT: Oui.

LE TRIBUNAL: Elle est dans...

M. RANCOURT: Elle est - elle est déjà....

LE TRIBUNAL: Bon. Donc,...

5

M. RANCOURT: Oui, parce que dans la lettre....

LE TRIBUNAL: ...on accumule - on accumulera pas le papier. Donc,...

M. RANCOURT: Oui.

LE TRIBUNAL: ...on va - tiens.

10

MR. DEARDEN: Thank you, Your Honour.

LE TRIBUNAL: Donc, ça fait déjà partie du dossier.

M. RANCOURT: Oui.

15

LE TRIBUNAL: Donc, moi, ce que je propose, c'est qu'on aille un - la conférence qu'on devrait avoir - qu'on devait avoir ce matin, je propose qu'on l'aille demain matin. Si vous êtes d'accord.

20

M. RANCOURT: Est-ce que ça serait possible d'appeler monsieur Doody et de le faire cette après-midi? Je - je - je mets ça comme ça parce qu'on est déjà sur place et tout.

25

LE TRIBUNAL : Bien, c'est que - c'est difficile pour moi, là, de - de me défaire de mes obligations là à la conférence cette après-midi. Je vais le faire pour vous accommoder demain et si nécessaire vendredi mais c'est pour ça que je suggère demain matin.

30

M. RANCOURT: Demain matin?

LE TRIBUNAL : Demain matin à 10h00.

M. RANCOURT: Merci.

LE TRIBUNAL: Puis on prendra, s'il faut qu'on

prenne toute la journée, on prendra toute la journée.

MR. DEARDEN: Your Honour, can - I hope it doesn't take the whole day, because really you're not making any rulings and I think....

THE COURT: No, no, no, no. I - je dis cela juste pour dire aux gens que je serais disponible, mais j'espère qu'on - qu'on - il y a plusieurs choses qu'on va pouvoir régler - there's a lot of things we'll be able to - to - to - to settle. There's some that we will be able to discuss and postpone decisions. There's all - all of this. So we'll see what - how it works tomorrow.

MR. DEARDEN: I'm just giving Your Honour the heads up that I have a rather critical meeting at two o'clock tomorrow afternoon. So I'm really hoping that we could and I predict we can finish before...

THE COURT: Yeah.

MR. DEARDEN: ...one o'clock.

THE COURT: Okay.

MR. DEARDEN: Thank you, Your Honour.

M. RANCOURT: Monsieur le Juge, j'aimerais dire merci de m'avoir entendu et merci d'avoir considéré mes inquiétudes pleinement. J'apprécie beaucoup.

LE TRIBUNAL: Merci.

MR. DEARDEN: Your Honour, sorry. I just had my associate look in the record for my letter of May 2nd, 2014 and Mr. Rancourt says it's in, it's not in here.

M. RANCOURT: Non, non. Elle est attachée à la

lettre que j'ai donnée au juge aujourd'hui dans laquelle je me plains de votre lettre.

MR. DEARDEN: You didn't give me that letter.

M. RANCOURT: Oui, oui, oui.

MR. DEARDEN: I've never seen that letter.

M. RANCOURT: Je vous l'ai donnée. Je vous l'ai donnée. Je l'ai donnée à votre collègue. La voilà. Elle est sur votre table et la troisième page.

MR. DEARDEN: Oh, there. Okay. Thank you.

M. RANCOURT: Merci.

MR. DEARDEN: Sorry, I thought it was in the record. Sorry, Your Honour.

LE TRIBUNAL: À demain.

FORMULAIRE 2
CERTIFICAT DE TRANSCRIPTION (PARAGRAPHE 5(2))

Loi sur la preuve

Je soussignée, Melanie Lauzon, certifie que le présent Document est une transcription exacte et fidèle de l'enregistrement de St. Lewis c. Rancourt portée devant la Cour Supérieure de l'Ontario au 161 Elgin Street, Ottawa, Ontario tirée de l'enregistrement No. 0411_CR21_20140507_091613__10_CHARBOMI.dcr, qui a été certifié dans le Formulaire 1.

Aug. 8, 2014
Date


Melanie Lauzon

PHOTOCOPIES DE LA TRANSCRIPTION sont pas certifiées et pas autorisée à moins APPOSER portant la signature originale de Melanie Lauzon
Règlement de l'Ontario 158/03 - Loi sur la preuve

*La présente certification ne s'applique pas aux motifs de la décision qui fait l'objet d'une révision par un juge.

SUPERIOR COURT OF JUSTICE

5 B E T W E E N :

JOANNE ST. LEWIS

Plaintiff

10 v.

DENIS RANCOURT

Defendant

15

P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE JUSTICE M. CHARBONNEAU
on May 12, 2014, at OTTAWA, Ontario

20

25

APPEARANCES:

30

R. Dearden

Counsel for the Plaintiff

D. Rancourt

In Person

(i)
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SUPERIOR COURT OF JUSTICE

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LEGEND

[sic] - Indicates preceding word has been reproduced verbatim and is not a transcription error.

(ph) - indicates preceding word has been spelled phonetically.

Transcript Ordered: June 28, 2014

Transcript Completed: November 24, 2014

Ordering Party Notified: November 25, 2014

MONDAY, MAY 12, 2014

LE TRIBUNAL : Et bien, bonjour.

THE COURT: Good morning.

MR. DEARDEN: Good morning, Your Honour.

MS. SEMENOVA: Good morning.

MR. DOODY: Good morning, Your Honour.

...JURY PANEL IS PRESENT (10:09 a.m.)

THE COURT: Well, good morning, ladies and gentlemen. My name is Justice Charbonneau and I would like to welcome you to this sitting of the Superior Court and thank you for coming here today and participating in this jury selection process. The case before the Court this morning is a civil case, which concerns a dispute between citizens of your community. A civil case is one in which the plaintiff, that is the party suing, seeks to establish that the defendant, the person sued, has committed a legal wrong and as a result, the plaintiff has suffered damages. The role of juror is one of the most important you will ever be called upon to perform. You will be acting as judges of your fellow men and women. Your community looks to you and expects you to do what is proper. Public confidence depends on the way judges and juries - jurors administer the law. The administration of justice is our most priceless possession and during this sitting, it will be in your hands. I am sure you will find it an interesting and rewarding experience. Today, we will be choosing a jury to decide whether the defendant made defamatory postings on a website referencing the plaintiff and if so,

5 what damages, if any, should be awarded to the
plaintiff. Now, let me talk to you about the
mode - method of selecting the jurors. Now, in a
few moments, we will begin selecting six of you
to try this case. First, let me explain you how
the process works. A civil jury consists of six
jurors. The clerk of the court will draw six
names from the box and as your names are called
or as your name is called, please answer "Here"
10 and come to the front of the courtroom. The
court officer will show you where to stand. In
the selection of the jury, each of the parties
have the right to exercise a certain number of
challenges. In the event that you are
challenged, do not consider that. It is a
reflection on your integrity or ability to act as
a juror. All that is happening is the parties
are exercising their choice in jury selection in
accordance with their legal rights to select
20 jurors that they think are best suited to try
this case.

LE TRIBUNAL : Il est très important que tous
membres d'un jury soient tout à fait impartial
puisque cette personne est un juge pour toutes
les fins du procès. Il est donc important de
s'assurer que je vais vous référer à certains
25 problèmes potentiels. Il est important que vous
nous avisiez lorsque votre nom sera appelé. Si
un de ces problèmes que je vais mentionner
s'applique à vous, mais à ce moment-là, m'en
faire part.
30

THE COURT: First of all, knowledge of the

parties and the case. No one who is related to or has a close relationship with any of the parties or their counsel shall serve on a jury. In this case, the plaintiff is Joanne St. Lewis. Maybe you could stand up, Mrs. St. Lewis and just so that everybody sees you. Thank you. And the defendant is Denis Rancourt. If you could do so, Mr. Rancourt. All right. The plaintiff, Joanne St. Lewis, is an assistant professor in the Common Law Section of the Law Faculty of - at the University of Ottawa, and resides in the City of Ottawa. The plaintiff is represented in this action by counsel Richard J. Dearden and counsel Anastasia Semenova from the firm Gowling Lafleur Anderson of Ottawa. The defendant, Denis Rancourt, is a former professor at the University of Ottawa. He was a physics professor at the University of Ottawa from 1987 to 2009. Mr. Rancourt publishes a blog on the Internet entitled U of O Watch. Mr. Rancourt will be acting on his own behalf during the trial. So, those are the main participants. Now, the case - more - some detail about the case.

LE TRIBUNAL : Quelques détails à propos de qu'est-ce que cette action en libelle diffamatoire - à quoi ça se réfère.

INTERPRETER: If you can talk about what this libel case, what it pertains to.

THE COURT: This case arises out of the publication by the defendant, Denis Rancourt, in December 2008, statements about Professor St. Lewis on his U of O Watch blog, and these

statements were published, at least in part in relation to a report that the plaintiff St. Lewis had made for the University of Ottawa concerning a complaint or an assessment or report that was made by the Student Appeal Centre of the University of Ottawa. The defendant published further statement in relation to this in his Watch blog in May of 2011, which again referred to the plaintiff and the report she had prepared. The plaintiff alleges that the statements in question made about her by the defendant were defamatory and malicious, and that as a result thereof, she has suffered damages. The defendant, while admitting that he made the statements or that he published the statements in his blog, denies that they were defamatory and also that he is entitled to a number of legal defences, which I will explain to the jurors during the course of the trial. Now, before we start selecting the jury to try this case, you should understand what you are supposed to do if you know any of the parties to this action or the counsel or if you have any personal knowledge of the facts that give rise to this action. If you do know any of the parties or their relatives or if you do have personal knowledge of the case, when your name is called, please step forward and explain briefly to me what knowledge you have. I will deal with this at that time. Now, secondly, it is also crucial that you do not know or have close personal contact or knowledge of any of the witnesses that will be testifying in this trial.

5
10
If you are personally acquainted with any of them, again, if your name is called by the clerk, you will, at that time, alert the Court and tell us if you know one of the witnesses or if you believe that you know of the witnesses and we will deal with the matter at that time. So, in order for you to have at least the name of these witnesses, I will first ask counsel for the plaintiff to read out the names of the plaintiff's, which the plaintiff expects will be called at this trial.

15
MR. DEARDEN: Thank you, Your Honour. Obviously, Joanne St. Lewis will be the first witness, ladies and gentlemen and then, University of Ottawa president, Allan Rock, and former vice-president of academic at the University of Ottawa, Robert Major; the former dean of the Law School at the University of Ottawa, Bruce Feldthusen.

20
COURT REPORTER: Sir, I can't hear from there. I can't record you.

MR. DEARDEN: Can you guys hear me?

UNIDENTIFIED FEMALE VOICE FROM THE BODY OF THE COURTROOM: No, not really.

25
30
MR. DEARDEN: Okay. Let me start over. So, obviously, Joanne St. Lewis, the plaintiff will be the first witness. Then, University of Ottawa president, Allan Rock; former vice-president of academic at University of Ottawa, Robert Major; former dean of the Law School, Bruce Feldthusen; Professor St. Lewis' mother, Sileen St. Lewis; Professor St. Lewis' brother-in-law, Denis

5 Laberge; a Department of Justice lawyer,
Jacqueline Beckles; former - she's a friend of
Professor St. Lewis; a former student of
Professor St. Lewis, Saron Gebresellassi - I'm
calling her Saron and Charlynn MacCharles and a
current professor of law, John Currie and then,
well, I'll leave it at that, Your Honour.

THE COURT: Thank you. I will now ask Mr.
Rancourt....

10 LE TRIBUNAL : Pourriez-vous, s'il vous plaît,
monsieur Rancourt, nous donner la liste des
témoins que vous anticipez appeler durant ce
procès?

15 INTERPRETER: So, I will ask Mr. Rancourt to
please give us a list of the witnesses that you
anticipate calling during this trial.

DENIS RANCOURT : Est-ce que je dois nommer les
témoins experts aussi?

20 INTERPRETER: Do I need to give the expert
witnesses also?

LE TRIBUNAL : Oui, oui.

INTERPRETER: Yes.

DENIS RANCOURT : Parce que monsieur Dearden n'a
pas nommé les témoins experts.

25 INTERPRETER: Because Mr. Dearden didn't.

MR. DEARDEN: I didn't, Your Honour, 'cause you
have to make rulings on whether they're...

LE TRIBUNAL : Bien, c'est des témoins...

MR. DEARDEN: ...called or not.

30 INTERPRETER: Well, they...

THE COURT: Yeah, what I would like though is
have the names in case we run into the

situation...

MR. DEARDEN: Okay.

THE COURT: ...where we have to, in the middle,
after three weeks of trial, we find out that one
of the jurors is the brother of one of the
experts and that wouldn't be very good.

MR. DEARDEN: Okay, thank you, Your Honour. So,
the two possible experts, ladies and gentlemen,
Camille Nelson, who's the dean of law at Suffolk
University in Boston and Bill St. Arnaud, who
lives here in Ottawa and knows a thing or two
about computers, Bill St. Arnaud.

LE TRIBUNAL : Très bien, merci, et monsieur
Rancourt?

INTERPRETER: Very well, thank you. Mr.
Rancourt?

DENIS RANCOURT : Et donc, messieurs, dames, les
témoins que je vais appeler sont les suivants :
il y a Cynthia McKinney, qui est une ancienne
membre du Congrès américain. Il y a le
professeur Adèle Mercier, qui est professeur à
l'Université Queen's. Il y a moi-même
évidemment. Je serai témoin. Il y a madame
Mireille Gervais, qui est la directrice du Centre
d'appel des étudiants à l'Université d'Ottawa.
Il y a monsieur Jean-Marie Vianney, qui est un
ami à moi. Il y a madame Hazel Gashoka, qui est
une ancienne étudiante de l'Université d'Ottawa.
Il y a monsieur Henry Wong, qui est un ancien
professeur et exécutif de l'Université d'Ottawa.
Il y a Stéphane Émard-Chabot, qui a été le chef de
cabinet du président Allan Rock, à l'Université

5 d'Ottawa et il y a possiblement Richard Dearden
lui-même, qui est l'avocat dans cette cause et
puis il y a un autre expert, qui est un expert en
technologie, qui est le professeur Jeremy
Cooperstock, de l'Université McGill.

10 INTERPRETER: And so, (inaudible), witnesses that
I will be calling are the Cynthia McKinney, a
member of the Congress; Professor Adèle Mercier,
at Queen's, professor at Queen's. And, of
course, I am a witness; Mireille Gervais, the
director of the Student Appeal Centre; Jean-Marie
Vianney, who's a friend of mine; Hazel Gashoka,
a former student; Mr. Henry Wong, a professor and
an executive for the University of Ottawa; Émard-
15 Chabot [sic], who was the cabinet of Allan Rock,
at the University of Ottawa; also possibly
Richard Dearden himself, who's a lawyer in this
case and there's another expert, Jeremy
Cooperstock of McGill, who's an expert in
20 technology.

LE TRIBUNAL : Donc...

25 THE COURT: For the same reason that you must be
totally impartial and appear to be impartial, it
is important that you should not have any close
connection with the witnesses and the individuals
that have just been named. So, if you are
related or closely associated with anyone
involved in this case as described above, then
when your name is called, please alert us. I
30 will deal with this at that time.

LE TRIBUNAL : Comme vous avez pu l'entendre, on
- ceci est un procès qui se déroulera de façon

bilingue. Donc, c'est absolument essentiel que vous puissiez comprendre et lire et le français et l'anglais.

INTERPRETER: As you're able to hear, this is a trial that will be a bilingual trial. So, it's absolutely (inaudible) that you are able to understand and read both English and French.

LE TRIBUNAL : Vous devez aussi être un citoyen Canadien.

INTERPRETER: You must also be a Canadian citizen.

LE TRIBUNAL : Vous devez aussi pouvoir bien comprendre ce que les témoins disent, ce que les avocats disent et ce que moi-même je vais dire.

INTERPRETER: You must also be able to - able to hear correctly what the witnesses say, the lawyers say and what I will also be saying.

LE TRIBUNAL : Donc....

INTERPRETER: So...

THE COURT: If any of you have any difficulty and in complying or cannot comply with any of these requirements, would you please come to the front of the court when your name is called and advise - and let me know. If your name - it is also - because it's essential that each of you consciously believe that if selected as a juror in this case, you can and will render a fair and impartial verdict.

LE TRIBUNAL : Finalement...

DENIS RANCOURT : Excusez-moi, Monsieur le juge. Excusez-moi. Je remarque et je me trompe peut-être, mais je remarque que vous avez donné les

directives par rapport à la langue uniquement en français.

INTERPRETER: Pardon me, Your Honour. Pardon me. Maybe I'm mistaken, I noticed that you gave directions about the - directives about the language only in French.

LE TRIBUNAL : J'espère qu'ils comprennent tous les deux.

INTERPRETER: I hope they understand them both.

DENIS RANCOURT : Moi aussi. Merci.

THE COURT: All right. So, I continue. Now, Mr. Rancourt and counsel for the plaintiff advised me that the trial of this action is likely to last between four and five weeks. In fact, they estimated four weeks with the scheduling that we've put. I say four to five weeks, one of - I want to be - make sure that you understand.

Obviously, we know when we start but it can always extend somewhat. So, that's what you will - you have to expect to be required for. Now, if sitting as a juror in this case for that length of time creates a significant problem for any of you, I ask you to let me know when your name is called. I will require that the problem be significant. When you make your request, would you please stand and when I call on you, tell us your name and the number, which has been assigned to you on the slip, which you have been given and please tell us briefly about your problem. As an example or as a few examples, potential reasons, which could be - create significant problems would be as follows: one's person's businesses,

key employees, pre-booked holiday plans, care of small children or medical problems, anything else that would make it difficult for you to act fairly and impartially. So, if your name is called, please alert me to this and I will deal with the matter at that time. So, I will now be calling on the registrar to start calling names. I wish to - the registrar brought to my attention here, obviously, we have interpreters...

LE TRIBUNAL : On a des traducteurs, des interprètes et on va procéder à l'assermentation des interprètes à ce moment-ci avant que la sélection du jury commence de façon formelle.

DANIEL RENAUD: INTERPRETER AFFIRMED - English/French

ODETTE BORRIS: INTERPRETER AFFIRMED - English/French

...SIX JURORS ARE SELECTED AND SWORN

...THE COURT RELEASES THE JURY PANEL (11:23 a.m.)

R E C E S S (11:24 a.m.)

U P O N R E S U M I N G: (12:08 p.m.)

...

THE COURT: All right. So, I suppose there is a problem with two jurors who are complaining.

So....

MR. DEARDEN: Okay, I'll let you finish, Your Honour, and then I have a...

THE COURT: So...

MR. DEARDEN: ...question to ask you.

5 THE COURT: ...what Juror Number 1 - both of them
has to do with one is paying the - well, both of
them is paying the parking and one is - one, he
could come by bus. It is seven dollars. He
doesn't want to pay that either. So, I'll hear
from both sides what you have to say about this.
If you have any comments, because I'll speak to
them, I'll tell them - I mean, it should have
been brought up before and that's - but have
10 anything else - anything you want to say before I
- I'll call them in and I'll - and...

MR. DEARDEN: So, this...

THE COURT: ...inquire from them. I just learned
this from the CSO.

15 MR. DEARDEN: Which jurors, Your Honour? Number
1...

THE COURT: Number 1...

MR. DEARDEN: ...which is Mr. Muraf.

THE COURT: And Mr. - and Number 4.

20 MR. DEARDEN: Pierre Cyr. Well, it's part of
their duty to...

THE COURT: Yeah.

MR. DEARDEN: ...get here.

THE COURT: Unfortunately, it's part of their
25 duty to get here, and - so I'll speak to them and
I assume that once I've spoken to them, it will
resolve the matter but I just wanted to make sure
I tell you before, so both of you know that
there's this problem.

30 DENIS RANCOURT : Est-ce que y'a une possibilité
que la Cour paye le parking?

INTERPRETER: Is it possible for the court to pay

the parking fees?

LE TRIBUNAL : Non. Si on paye pour eux, on va payer pour tout le monde...

INTERPRETER: No. If we pay for them, we'll have to pay for everyone.

DENIS RANCOURT : Ah, oui.

LE TRIBUNAL : ...puis les règlements, le gouvernement - les règlements, c'est que ça fait pas - ça fait partie de leurs obligations. C'est de se rendre à la cour.

INTERPRETER: And the rules, according to the government, the rules say that that's part of their obligation is to get to court in whichever way that may be.

MR. DEARDEN: Your Honour, before you call the jurors back, I just wanted to alert you to one thing and I'm not sure if you want to say anything to them about this, but when you were making your remarks about what the case arose out of, you mentioned the publication was December 2008. It's not that publication. It's the February 2011, February 11, 2011 and May the 18th, 2011 are the two at issue.

THE COURT: That's fine. That's not - it wasn't - it was - the important part of that message was that they know what it's - the reference to the blog and the parties, so....

MR. DEARDEN: Yeah, so I leave it to Your Honour...

THE COURT: So, it - it's February 2011.

MR. DEARDEN: And May 2011.

THE COURT: Yeah. Thank you.

MR. DEARDEN: Which you did tell them. You told them about the May one.

THE COURT: Yes, I didn't - yeah, I got it wrong with the February one. I said December.

MR. DEARDEN: Yeah, 2008.

THE COURT: 2008 - I don't know where I took that, but anyway....

MR. DEARDEN: Well, there is one - that blog will be in evidence...

THE COURT: Oh, okay.

MR. DEARDEN: ...but it's not one of these articles in issue.

THE COURT: Yeah, okay. Well, obviously they - all right, thank you for that. So, just to tell you, once we resume, I'll be making an opening speech to the jury. Then we'll let the jury go and we'll deal with the matter about the proxy defence, and tomorrow we'll deal with the subpoenas.

DENIS RANCOURT : Juste un...

INTERPRETER: Just a...

LE TRIBUNAL : Oui?

INTERPRETER: Yes.

DENIS RANCOURT : ...un petit peu de mise en ordre? J'ai des copies papier pour certaines choses par rapport à ce qu'on va faire.

INTERPRETER: Just a bit of administration duties here. I have copies to give....

LE TRIBUNAL : Oui, c'est ça. Vous pourrez me donner ça tout de suite après, quand qu'on va avoir remis....

INTERPRETER: Yes, you can give me that right

Opening remarks to the jury by the Court

after when we have finished with the jury coming back in and my comments.

DENIS RANCOURT : Merci.

LE TRIBUNAL : Ça fait que vous pouvez faire rentrer le jury.

INTERPRETER: So, you may get the jury to come in now.

INTERPRETER: Thank you.

CLERK REGISTRAR: All rise.

...JURY ENTERS (12:15 p.m.)

CLERK REGISTRAR: Members of the jury may be seated as you come in. All members of the jury are present, Your Honour. Please be seated.

THE COURT: All right. Well, I have been advised that there is some complaints that have been raised about the fact that there are - that there's parking to be paid. That's part of your duty once you're summoned under law is to get here. So, how you do it exactly is your responsibility and unfortunately, there's absolutely nothing in the regulations that the government has provided for paying parking or any other cost of - to get - so that you can get here. That's totally out of my concern - out of - not my concern. I kind of feel for everyone, I mean, who is doing this job but that is - not in my prerogative to, in any way, have you reimbursed for those. So, now that the panel is gone and you have been sworn as jurors and unfortunately, you'll have to act accordingly.

LE TRIBUNAL : Donc, messieurs, dames des jurys, je vais vous donner un peu d'explication sur ce

Opening remarks to the jury by the Court

que vous pouvez vous attendre qui va se dérouler maintenant. Comme je vous l'ai dit ce matin, la partie qui a initié cette poursuite s'appelle la demanderesse et la personne qui est le sujet de la poursuite ou qui est actionnée, c'est le défendeur. Dans ce cas ici, c'est donc Joanne St. Lewis....

INTERPRETER: So, ladies and gentlemen of the jury, I will give you a bit of explanation as to what you can expect as to the unfolding of this matter. As I indicated this morning, the party that has initiated this suit, she is called the plaintiff and the individual sued is the defendant. In this case, we have Joanne St. Lewis....

THE COURT: ...who is the plaintiff and Denis Rancourt is the defendant and the subject matter, as I told you, is the alleged defamatory postings made by the defendant in his - on his blog. As I mentioned in my opening remarks, it involves a claim by Mrs. Lewis [sic] that the defendant posted defamatory statements on his website, U of O Watch. Now, I made a mistake, I believe, in telling you the dates of this. It's - there's two dates, which are in issue, and that is the February 2011 and not December 2008 as I mentioned and the May 2011, which I mentioned to you.

Now, at the end of the case you will be asked to answer questions, which will be given to you to deal with all of the issues you will have to

Opening remarks to the jury by the Court

5 decide, including whether the statements
complained of were published by the defendant and
were defamatory. Two, whether any of the
defences to publishing a defamatory statements
are available to the defendant. Three, what, if
any, damages have been suffered by the plaintiff,
if you find that there are no defences available,
and that the statements were defamatory. I will
give you full details of the questions that
10 you'll have to answer before you commence
deliberations.

15 The evidence to be introduced and the witnesses
to be called are entirely in the control of the -
of counsel for the plaintiff and the defendant
who is self-represented. Subject to certain
matters on which I may have to make rulings from
time to time, you and I will sit and listen
attentively to what the witnesses and counsel
have to say. Now, the daily schedule that we
usually start at 10 a.m. and have a morning break
at 11:30, and then we continue until 12:45, 1,
around that time, and then we take a lunch break
until 2 or 2:15, and then we continue until 4:30
20 p.m., with an afternoon break at around 3, 3:30
p.m. I can tell you now that we will not sit on
May 28, 29 and 30th. The four to five weeks had
this - had taken into consideration the fact
we're not sitting on May 28, 29 and 30th, and the
fact naturally that there is a holiday Monday
30 during those weeks. So, you may plan accordingly
for those days.

Opening remarks to the jury by the Court

During the trial, you may go home at the end of each day. However, once all the evidence has been heard and I finish giving my instruction to you on the law, you will be sent to your jury room to reach a verdict. At that stage, you will be kept together as jurors during the hours of deliberations until you reach a verdict. You will, however, be allowed to go home each night. Later, I will ask you to choose one juror to act as your foreperson. The foreperson will lead your discussions, will announce your decision in the courtroom at the end of the case. You do not have to choose that person immediately. As the trial continues, however, please think about which one of you would be best - the best person to do that job. I will speak to you again about this later on. Now, every time you come back into the courtroom, would you please take the same seat that you have now? If you want to take notes during the trial to help you remember what the witness said, you may do so. Pencils and pads will be provided to you - to any of you who wish to take notes. Remember, however, you may find it difficult however to take detailed notes, accurate notes, and at the same time, pay close attention to what the witnesses are saying and how they are saying it. Now, if you decide to take notes, make sure that taking them does not interfere with your ability to listen to and your duty to consider all of the evidence.

To protect the secrecy of your work, you must not

Opening remarks to the jury by the Court

5 take your notes with you at the end of our
sittings for each day. We will make arrangements
to keep them in a secure place and return them to
you when we resume sitting the following day. If
you decide not to take notes, it is your
individual responsibility to listen carefully to
the evidence. You must not give this
responsibility to any fellow juror who may be
taking notes. You should not be overly
10 influenced by the notes or the memory of the
juror who took notes. Now, we depend on the
memory and judgment of all of you taken
collectively to decide this case. Although the
testimony of every witness has been recorded by a
court reporter, we will not have a written
15 transcripts *[sic]* of the evidence available for
you to review when you go to your jury room to
discuss your decision in this case. If you need
help to recall any parts of the evidence, I will
be available to assist you.
20

Now, the judge and jury system is one of the
oldest and most important of our legal
traditions. We work together as a team. You are
the judges of the facts. I am the judge of the
25 law. Although I may be commenting on the
evidence at the end of the trial, your view on
the evidence is what must prevail. That means
you must reach conclusions about what happened
between these parties. Because I am the
30 exclusive judge of the law, when I tell you what
the law is, my view prevails. It would be wrong

Opening remarks to the jury by the Court

for you to decide this case on what you think the law is or what you think the law should be. You must accept the law as I explain it to you and you must reach a verdict based on these instructions.

Earlier, I gave you a brief outline of what the case is about. This is a civil, not a criminal trial, and in a civil trial, the party who has the burden of proving an issue must prove - produce evidence proving it on a balance of probabilities. I will tell you more about the burden of proof and the standard of proof at the end of the trial.

Now, there will be opening statements. The case will begin by Mr. Dearden, counsel for the plaintiff, making an opening statement as to what the plaintiff's case is about. What counsel says is, of course, not evidence and if what he says is not borne out by the evidence or is contradicted by the evidence given by the witnesses in the witness box, you are to erase from your minds what counsel says. The sole purpose of this opening outline is to enable you to better follow the evidence as it is developed.

Counsel for the defendant also has a right to make an opening statement, either after counsel for the plaintiff has delivered his opening statement - I said counsel - I should say Mr. Rancourt, the defendant, who acts for himself -

Opening remarks to the jury by the Court

5 or before the defendant calls his evidence. Now,
once this is - the opening statement of the
plaintiff has concluded and the opening statement
of the defendant, if that's the case, counsel for
the plaintiff, who has given you a general
outline of what he expects the case - the
evidence you will hear, will then call his
witnesses. He will ask them questions in what is
known to be examination in-Chief. The feature of
10 examination in-Chief is that counsel is not
permitted to ask leading questions except on
matters that are not in controversy. He must be
careful not to lead the witness, that is to put
the answer in the mouth of the witness by the
form of his question. We want the witness to
speak spontaneously. Once the counsel for the
plaintiff has concluded his examination in-Chief,
then defendant may cross-examine the witness. In
cross-examining the witness, leading questions
20 are quite proper and the cross-examiner may
suggest the answer and bring up new matters
because he is testing the observations,
recollections and truthfulness of the witness.

25 When the cross-examination of the witness is
finished, counsel for the plaintiff has the right
of re-examination to clear up certain matters
that have been raised by the cross-examination.
After counsel for the plaintiff has called all of
30 his witnesses, counsel for the defence has the
right to present evidence. He may make an
opening statement to you if he sees fit,

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outlining the nature of the defence. The defendant will then call his witnesses and he will examine in-Chief and counsel for the plaintiff will have the right to cross-examine.

When the defence is complete, the plaintiff may have, but not necessarily has, but he may have - he may have a right to call evidence in reply to answers - answer matters that have been raised by the defence witnesses. Then, when the last witness has been heard and all the evidence is in, then counsel for each party will address you - or counsel for the plaintiff and Mr. Rancourt will address you. They will make their submissions as to what you should find. This will be followed by my charge in which I will give you instructions on the law and show you how to apply the law to the facts as you find them. Then you will be asked to retire and consider your verdict.

Now, I should mention, you are to reach your conclusions of fact only upon the evidence given by the witnesses in this courtroom or contained in the exhibits filed during the trial, or in deposition read to you during the course of the trial. You have no right to gather your own evidence. I would ask you to pay close attention to the evidence as it is introduced. You must ultimately judge the truthfulness of the evidence given and the weight or value to be given to it. Watch for any particular bias exhibited by a

Opening remarks to the jury by the Court

witness, any particular interests or any inconsistencies in his or her testimony. You may choose to believe part of what a witness says and reject the rest. You may accept all of what the witnesses says or you can reject totally what the witness says. It's entirely up to you. You decide what the facts are in this case. However, your findings of facts must be based only on the evidence heard in the courtroom. Things you see or hear in the media are not evidence and you must ignore them. The same thing applies to any rumours that may circulate about this case. There's good reason for this rule. Media reports and rumours may be entirely unreliable. Neither party has any opportunity to reply to these out-of-court rumours or accusations, nor can they cross-examine their source or present evidence in reply. Therefore, you cannot pay attention to such things. In this day and age, I must particular caution you not to conduct your own investigation and, for example, research any of this on the Internet or any other sources about any aspect of this case. If this happens, it could result in a mistrial, which would mean that the trial would be stopped and the plaintiff would have to go through - the plaintiff and the defendant would have to go through a new trial some months from now. Moreover, you would not be opening your - obeying your oath as jurors and as such, would be in breach of the law.

Now, at all times in your evaluation of the

Opening remarks to the jury by the Court

5 evidence, use your common sense. Above all, I
want to stress the importance of keeping an open
mind. You have a duty to be fair and impartial
throughout. You may develop tentative views
about my - matters early on, but you should only
decide the case after you have heard all the
evidence, counsel have addressed you, I have
given you the questions and the instructions and
you have deliberated as a jury. Only then, with
10 all of that information, should you decide.

15 If you have difficulty hearing anyone, the
witnesses, counsel, the defendant or myself,
please let me know so that the evidence or
statement can be repeated.

20 I must ask you not to discuss the case with
anyone or let anyone tell you anything about it
outside the courtroom. If anyone tries to
discuss the case with you, please report it to me
at once. Please do not, in any way, converse
with the parties or counsel, with any witness in
this case, even if it is only to discuss
banalities or to - the time of - or even the time
25 of day. In this way, the parties of the lawsuit
can be assured of your absolute impartiality.

30 Let me warn you about members of your family and
friends. When you go home, you will find them
most interested in what you have been doing today
and most likely, they will be filled with
gratuitous advice on what you should do. Again,

Opening remarks to the jury by the Court

I suggest you tell them why you cannot discuss the case. You will find they will respect your wishes.

5 May I recommend that you do not discuss the case among yourselves during the trial. If you are going to discuss it, discuss it altogether, not separately with one or the - one - with one or other juror because you may find as this trial develops, that your views will change from time to time and that evidence that you thought at one time important, becomes quite insignificant later and vice versa. If you express an hasty opinion, then you may find yourself prevented by pride from later changing your view, when perhaps 10 you'll have to do so in the interest of justice.

15 Your role should be one of careful patient listening to the evidence. The proper time to consider this case is when you have heard all the evidence, the addresses of counsel and I have completed my charge to you. Then you consider your verdict.

20 Now, as the case proceeds, I may be called upon from time to time to rule on the admissibility of evidence tendered by the parties or to rule on other questions of law. Only admissible evidence can be offered - submitted to the jury.

25 Generally speaking, I can rule on hearing the question. I can rule on issues without - there 30

Opening remarks to the jury by the Court

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may be occasion where I have to hear the evidence in your absence and rule as to admissibility, so sometimes, there'll be a brief objection, we can deal with when you're here, but sometimes, it's impossible, and we, at that point, I will ask you to leave the courtroom while I decide the matter. If that should happen, then I would ask you to retire and not to then question why or what happened during these discussions. What you will then hear will be all the evidence that are legally relevant and admissible. So, don't speculate.

Finally, and it is our duty as judges to sit back and be keen, patient listeners, leaving it to the parties, counsel and Mr. Rancourt to present the case to us, to examine and cross-examine the witnesses. At all times, we will remain completely objective, approaching our duties without sympathy, without prejudice, being prepared to decide the case only on the evidence and on the law. If we do that to the best of our ability, our task will be probably - properly carried out and a just and proper verdict will be arrived in this case.

Now, in discussions with counsel, it has been determined that we will not need your services until Thursday morning. Unless there's any change of this, I will release the jury until Thursday, unless counsel wants to speak to me about whether I should get them to come in

earlier but I think that's what we discussed.

There's no change in that?

MR. DEARDEN: No change this side, Your Honour.

THE COURT: Satisfied with that, Mr...

DENIS RANCOURT : Oui, c'est ce que j'avais
compris.

INTERPRETER: That's what I had understood, Your
Honour.

THE COURT: So, you're free to go and see you on
Thursday morning at ten o'clock. Thank you.

...JURY RETIRES (12:37 p.m.)

THE COURT: All right. So, the first thing we
have to deal with is the defend proxy - claim by
proxy defence and I've read - I've received all
the materials and I spent a good time the weekend
reading it, so I know about it. Don't want you
to go all of the - over everything, but I want
you to give me your best shot at explaining to
me, in the case of Mr. Dearden, why this is not a
defence in law, which should be submitted to the
jury for decision, and I'll then hear Mr.
Rancourt...

DENIS RANCOURT : Est-ce que je peux...

THE COURT: ...as to what...

DENIS RANCOURT : ...commencer par vous donner
certaines choses...

INTERPRETER: If I may start by giving you
certain....

LE TRIBUNAL : Oui. Oui, oui.

INTERPRETER: Yes, yes.

LE TRIBUNAL : Oui, oui, certains matériaux, oui,
que de plus...

DENIS RANCOURT : Est-ce que je...

INTERPRETER: ...certain materials?

LE TRIBUNAL : ...vos - parce que moi j'ai votre factum, mais je sais que vous m'avez envoyé vos - votre - vos décisions, eh? Ça, j'ai pas ça.

Vos...

INTERPRETER: Yes. Because I have your factum, but you also sent me your decisions, your...

DENIS RANCOURT : Oui, alors, voici - donc, vous avez...

INTERPRETER: Yes, well, here you are, Your Honour.

LE TRIBUNAL : La jurisprudence, j'ai pas ça.

INTERPRETER: Your case law, I don't have that.

DENIS RANCOURT : Oui, j'ai trois ou quatre choses à vous donner. Donc, vous aviez demandé une liste, une liste de mes témoins mise à jour, en ordre, etcétéra. Donc, j'ai préparé une copie pour vous de ça.

INTERPRETER: Yeah, I have three or four things to give you. You had asked for a list, an updated list of my witnesses in order. I've prepared a copy for you.

DENIS RANCOURT : Et par rapport à cette liste, Monsieur le juge, je me demande si ça serait pas mieux de - que l'experte, le professeur Mercier, puisse parler immédiatement après l'experte Cynthia McKinney? Donc, l'experte Cynthia McKinney a un billet d'avion pour le 26 mai, je crois et puis donc, sur le même thème, l'experte, Adèle Mercier, pourrait parler immédiatement le 27 après, comme ça, y'aurait plus de cohérence

dans le thème et dans la présentation. Je me demande si ça serait possible de faire comme ça?

INTERPRETER: Regarding that list, Your Honour, I'm wondering if it wouldn't be better that the - *Professeur Mercier*, the expert, may be able to speak exactly after Cynthia McKinney because Cynthia McKinney will - has a plane ticket for the 26th of May. So, on the same theme, Mercier could speak on the 27th so there would be more coherence in the aspect. I'm wondering if it's possible to do that?

LE TRIBUNAL : Est-ce qu'ils parlent de la même chose?

INTERPRETER: Will they be speaking to the same thing?

DENIS RANCOURT : Ils, ils - pas complètement, mais c'est le même grand thème. C'est à dire, y'a une critique de l'expert de la plaignante, une, une des personnes fait ça, mais y'a aussi le vrai sens du terme, qui est en litige, le terme « house Negro ».

INTERPRETER: Well, not entirely, but it is the broad theme. There is a criticism of the expert brought forth by the plaintiff, but there's also the true sense of the complained words, "house Negro."

LE TRIBUNAL : Oui. Oui, mais c'est parce que là...

DENIS RANCOURT : Et ça, c'est...

LE TRIBUNAL : ...on faisait un compromis, mais on va voir ce que monsieur Dearden a à dire, mais on faisait un compromis parce que s'il - si la

cause - normalement, on interrompe pas la cause du demandeur excepté exceptionnellement pour donner - pour, par exemple, dans ce cas-là, on avait la permission.

INTERPRETER: Yes. We'll do that as a compromise, but we'll see what Mr. Dearden has to say about that but normally, we wouldn't interrupt the plaintiff's case, except in exceptional circumstances as in this case...

DENIS RANCOURT : Oui.

LE TRIBUNAL : Qu'est-ce que vous...

INTERPRETER: ...where there was a plane ticket.

THE COURT: Yes, sir.

MR. DEARDEN: Your Honour, my hope is that the plaintiff's case would be in by the end of May 23rd but if it isn't, then I would object to Adele Mercier getting put on, on the 27th. We made the accommodation for Cynthia McKinney because she's flying from the United States but if the plaintiff's case is not over, I oppose putting on some prof from Queen's as a defendant's witness.

LE TRIBUNAL : Je pense que c'est pas suffisamment important, monsieur Rancourt...

DENIS RANCOURT : D'accord.

LE TRIBUNAL : ...pour - on va leur expliquer. Ils vont avoir la chance d'entendre les témoins et puis on pourra - je vais, naturellement, revoir avec eux...

DENIS RANCOURT : Oui.

LE TRIBUNAL : ...la preuve puis leur expliquer les questions en litige et puis je pense que ça les empêchera pas du tout de bien apprécier toute

la preuve. Donc, je pense pas qu'on devrait faire une exception.

INTERPRETER: I don't think it's sufficiently important, *monsieur* Rancourt. We will explain to them. They will have the opportunity to hear the witnesses. I will obviously review the evidence with them and explain the issues at bar, and I don't think that it will not preclude them from appreciating the totality of the evidence.

DENIS RANCOURT : Merci. Et j'ai un autre point par rapport à l'ordre des témoins, Monsieur le juge. Je crois que la plaignante a son témoin, Bill Arnaud [*sic*], comme étant le dernier témoin, si je comprends bien, parce qu'elle a séparé les faits et les experts et comme c'est un expert, il vient à la fin et je pense que ça serait bien que les deux experts, sur la question technique et informatique, puissent parler un après l'autre, surtout si c'est le dernier témoin de la plaignante. J'amènerais mon expert technique immédiatement après. Comme ça, tout le côté technologie serait traité dans le temps là, un après l'autre pour qu'on ait de la cohérence et de la suite dans les idées plutôt que d'avoir plein de mon autre évidence avant d'entendre mon expert, qui complète et qui contre l'expert technique de la plaignante.

INTERPRETER: Thank you. And I also have one other point with regards to the order. I think that the plaintiff's last witness would be Bill Arnaud [*sic*]. She's separated facts and as he's an expert and coming at the end, and I think that

5 it would be well from the computer and technical point that they be able to speak to the same thing, especially if it's the same issue. I would bring my expert so - to testify right after that witness because then that whole technological aspect would be entirely dealt with rather than hearing evidence, which would confuse so that the - they would hear my opposing expert evidence.

10 LE TRIBUNAL : Okay, bien, à moins que - si les demandeurs sont d'accord, mais autrement, on peut pas change - je veux dire les jurys sont habitués entendre - des médecins, ils viennent témoigner pour les demandeurs; des médecins qui viennent
15 témoigner, des ingénieurs qui - je pense pas que c'est apte, mais qu'est-ce....

INTERPRETER: Well, unless the plaintiffs are in agreement, the jurors are used to hear [sic] doctors for the plaintiffs and then followed by
20 those of the defence, and then doctors. I don't think it's necessary.

THE COURT: What - do you have any comments on this?

25 MR. DEARDEN: Your Honour, this is with respect to the limitation period defence and that's - you're gonna need to have a *voir dire*. The jury won't be hearing this.

THE COURT: Yeah.

30 MR. DEARDEN: You need to first of all decide the qualifications of Dr. Cooperstock, who's the defendant's witness and my witness is Bill St. Arnaud.

THE COURT: Oh, so I'll hear them in any event in a *voir dire*?

MR. DEARDEN: In the *voir dire*.

THE COURT: About the broadcast issue?

MR. DEARDEN: Yeah, broadcasting station in Ontario issue...

THE COURT: Yeah.

MR. DEARDEN: ...yes. And the earliest that that's gonna happen is when Mr. Rancourt decides to put Mr. Cooperstock on - Dr. Cooperstock on the stand, and I'm quite content that, you know, the two experts go one after the other, but my expert is replying to his expert.

THE COURT: I see.

MR. DEARDEN: So, you know, whatever that day is, which I do not envision, you know, be...

THE COURT: I see.

MR. DEARDEN: ...right now, it might be the end of, you know, 29th, 30th of May, but more likely the week of June 2nd.

THE COURT: Oh, I see, okay. So, I'll be hearing that as *voir dire*, those two witnesses.

MR. DEARDEN: Yes.

THE COURT: So, they will be heard one after the other, but yours will start first, then, eh?

DENIS RANCOURT : Okay. Donc, j'avais pas compris. Maintenant, on me l'explique. Donc, le, le - y'a un des témoins de la plaignante qui va être après plusieurs de mes témoins et après que j'ai présenté mon - mes - mon témoin sur les - la question technique. Donc, on est en train de changer l'ordre habituelle.

LE TRIBUNAL : Non.

DENIS RANCOURT : Habituellement...

INTERPRETER: I hadn't understood that. Now, it's being explained to me. So, one of the plaintiff's witnesses will be after several of my witnesses and after, I will have presented my witness. So, we're changing the usual order.

LE TRIBUNAL : Non. Je pense que si je comprends bien là, si je comprends bien, c'est que ça, c'est une question de droit je dois décider dans l'absence du jury.

INTERPRETER: No, if I understand correctly, is that that's a fact of law or a question of law that I will decide in the absence of the jury.

DENIS RANCOURT : C'est à dire que...

LE TRIBUNAL : Voyez-vous? C'est une question - ce que - si vous êtes en désaccord, vous pouvez me le dire, mais ça semble logique là. La - l'interprétation de la loi sur le libel là, y'a une question de droit à décider puis y'a une question, après ça, bien c'est moi qui va avoir la question de la connaissance et quand qu'elle a appris ou quand qu'elle leur a dit et toutes ces choses-là. Ça, ça va être pour le jury, mais la question clairement à savoir si c'est une station, a *station*, etcétera, qui sont reliés à ces - je vais décider ça, le juge - le jury...

INTERPRETER: You see, what Mr. Dearden - if you are in disagreement, you can tell me, but it seems to be logical, the interpretation that is of the libel act is - there's a point of law to determine and then, necessarily, there's also a

question of knowledge or when did the plaintiff become aware. That will be for the jury but the pure question to know whether or not it's a broadcast station, I will decide that.

THE COURT: In other word, the jury will never hear these witnesses, right?

MR. DEARDEN: Right.

THE COURT: It's purely to decide the legal issue.

DENIS RANCOURT : Donc, vous dites qu'il y a aucune question de faits dans tout ce que ces experts vont présenter, que le jury devrait voir?

INTERPRETER: So, what you're saying is that there are no fact issues in all those testimony from the experts that the jury should hear?

LE TRIBUNAL : Non, parce que si je décide en votre faveur sur ce *voir dire* là, à ce moment-là, ça va - la loi s'applique, etcétera, et puis là on va dans les questions de faits.

DENIS RANCOURT : Mais, mais c'est...

INTERPRETER: No, because if I were to find in your favour, then the law would apply and then we go into issues of fact...

LE TRIBUNAL : Le jury n'a pas à décider ça si la loi s'applique ou pas.

INTERPRETER: ...but the juror doesn't - jury does not have to determine whether or not that applies.

DENIS RANCOURT : Mais là, juste pour clarifier, je - j'avais compris que le *voir dire* était uniquement pour savoir si le témoin a le droit de mettre de l'évidence, son opinion d'expert et

5 ensuite, s'il a droit, vous l'entendez parce que
c'est une question légale qui est devant vous.
Est-ce - si je comprends bien? Donc, le *voir*
dire est uniquement pour savoir sa compétence et
là, je viens d'apprendre que la plaignante va
faire un *voir dire* sur la compétence de mon
expert. Je savais pas ça avant et, et après, si
les deux experts sont suffisamment compétents et
passent ce test, là, vous entendez leurs opinions
d'expert et vous décidez la question de droit.
C'est ça?

10 INTERPRETER: To clarify, I understood that the
voir dire was uniquely to find out whether or not
the witness was to be qualified as an expert, and
that you would hear it because it's a legal
15 question. Is - am I understanding it correctly?
So, the *voir dire* is strictly to deal with the
qualification as an expert and I didn't know that
the plaintiff was going to challenge that, and
then if both experts pass that competency test,
20 you will hear the evidence on those - and you
will decide that point of law.

LE TRIBUNAL : Mais normalement, la façon que ça
procède c'est que vous présentez votre témoin.
25 Si la partie dit : « On est pas prêt à l'accepter
comme un expert. », on fait un *voir dire* dans le
voir dire, si vous voulez puis on décide la
première question c'est, est-ce que cet individu
peut donner une opinion, une preuve d'opinion?
30 Là, après ça, si je dis : « Oui. », on l'entend.
Eux après, puis la même chose s'arrive avec leur
expert. On décide si est-ce qu'il peut donner

son opinion ou pas puis après ça, il la donne ou il la donne pas.

INTERPRETER: But normally, the way you would do it is, you would present that witness. If the other party says we don't recognize him or her as a witness, then it would go to *voir dire*, and we would determine whether or not this individual can give opinion evidence. If I determine that yes, then we would hear from that witness. If - and then the same thing with their expert. Can that - their expert, yes or no, give opinion evidence? And then we - if so, then we would hear.

DENIS RANCOURT : Okay. Donc, donc, ils ont un témoin qui est - qu'on va entendre après que j'ai mis des témoins. Donc, dans ce sens-là, on a changé l'ordre des choses parce que c'est leur expert, qui va être entendu après certains de mes témoins.

INTERPRETER: So, they have a witness that we will hear from after I have brought forward witnesses. So, we've changed the order of things because their expert will be heard after my witnesses and my expert.

LE TRIBUNAL : Non, mais toutes les autres questions seront - bien...

DENIS RANCOURT : Seront réglées, oui.

THE COURT: Oh, yeah.

DENIS RANCOURT : Oui.

THE COURT: What we do with discoverability and knowledge then? It will come out of the...

MR. DEARDEN: That's for the jury.

THE COURT: Eh?

MR. DEARDEN: That's for the jury.

THE COURT: No, no, but they will have heard that before, obviously. You will have finish, right? Because we do this at the end.

MR. DEARDEN: Well, right now as I stand here, Your Honour, I have a few questions I believe I'm gonna ask Mr. Rancourt on cross-examination about the discoverability issues, so I don't know that they would have heard everything at that point.

THE COURT: No, no, no, no. But from your - the evidence you put forward in your - with your witnesses, all of that will have been in.

MR. DEARDEN: Yeah.

DENIS RANCOURT : Incluant l'expert? Incluant l'expert?

INTERPRETER: Including the expert?

MR. DEARDEN: No. No.

THE COURT: No, no. The expert will be only on the legal issue but what I'm saying is that you're right in saying that we won't come back with a witness. They won't be calling again witnesses to talk about....

LE TRIBUNAL : Pour savoir s'ils auraient dû - si madame aurait dû savoir ou pas savoir ou quoi que ça soit. Ça l'air - tout ça va être devant le jury déjà.

INTERPRETER: ...to know whether or not they should have or Mrs. St. Lewis should have known or not known, all of that will already be before the jurors.

DENIS RANCOURT : Oui, et cette question-là, si

elle devait savoir ou si elle aurait pu savoir, ça, c'est des questions de faits que le jury décide...

LE TRIBUNAL : Oui.

DENIS RANCOURT : ...si je comprends bien.

INTERPRETER: Yes, and that issue, if she should have known or could have known, those are questions of fact that the jury would decide.

LE TRIBUNAL : C'est ça.

INTERPRETER: Yes. If I understand correctly.

DENIS RANCOURT : Donc, ça, c'est clarifié.

INTERPRETER: Yes.

DENIS RANCOURT : J'ai - je suis content d'avoir posé ces questions-là.

INTERPRETER: Okay, that's clarified. I'm happy I asked those questions.

LE TRIBUNAL : Mais naturellement, ça - il se peut que ça soit amoindri dépendant du - de la décision que je ferai sur le droit.

DENIS RANCOURT : Oui.

LE TRIBUNAL : Okay.

INTERPRETER: Well, naturally it could be diminished on the decision I may take as to the application of the law.

DENIS RANCOURT : Et j'ai ici une copie papier du *factum* que je vous ai envoyé électroniquement.

Est-ce que vous en avez besoin ou...

INTERPRETER: All right. And I also have here a paper copy of the *factum* that I sent you electronically. Do you need that?

LE TRIBUNAL : Non. Ça - j'ai - vous voulez dire votre *defendant's factum* voir dire de...

INTERPRETER: No. You mean your *voir dire* factum?

DENIS RANCOURT : Oui.

LE TRIBUNAL : Non, ça, j'ai ça.

INTERPRETER: No, I have that.

DENIS RANCOURT : Okay, vous avez pas besoin de ça.

INTERPRETER: You don't need that. Okay.

DENIS RANCOURT : Et puis, j'ai aussi...

LE TRIBUNAL : Je n'ai pas vos...

INTERPRETER: I don't have...

DENIS RANCOURT : Oui, alors, pour le livre des autorités, ce que j'ai fait, j'ai préparé un livret comme ça avec un DVD du, du livre des autorités dans le livret, ici, et c'est la seule façon que je peux parce que j'ai ni le temps, ni les ressources pour faire un - pour relier le, le livre qui prend un certain temps. Il faut l'envoyer. Il faut que ça soit relié avec des *tabs*. Il faut le ramasser. Ça prend plus qu'un jour et donc, j'ai - je demandais et j'ai - j'en avais parlé au début que mes livres d'autorités puissent être soumis de façon électronique.

INTERPRETER: Okay, for the Book of Authorities, I prepared a pamphlet here with a DVD, a DVD of the Book of Authorities, and this is the only way that I could do that because I neither have the time nor the resources to bind the book, which it has to be sent. It has to be bound with tabs. You have to pick it up. It needs more than one day. So, I was asking - I spoke about this at the beginning, that my Books of Authority [*sic*]

could be submitted electronically.

LE TRIBUNAL : Comment vous allez faire pour les
référer à...

INTERPRETER: Well, how are you going to refer to
them?

DENIS RANCOURT : Je...

LE TRIBUNAL : ...pendant vos arguments?

INTERPRETER: I can see it.

DENIS RANCOURT : J'ai - j'amené un ordinateur.
Je peux le regarder à l'écran, si j'ai besoin de
mes, m'y référer.

INTERPRETER: I have a computer. I can look at
it on my screen if I had - need to refer to it.

MR. DEARDEN: You know, Your Honour, I'm
objecting to that. I - you know, I'm working now
like having to print off what Mr. Rancourt sent
me but I work off of hard copy. That's how I
work and my computer actually doesn't - my laptop
doesn't have a disk drawer. So, I can't use - I
know I can find a computer somewhere, but it is
terribly inconvenient. I want tabbed, indexed,
hard, you know, hard copy of his Book of
Authorities and not get...

LE TRIBUNAL : Combien en avez-vous là?

INTERPRETER: How many do you have?

DENIS RANCOURT : Ça, c'est celui que je vous ai
déjà envoyé.

INTERPRETER: Well, that's the one I already sent
you.

LE TRIBUNAL : Non, non...

INTERPRETER: No, no.

DENIS RANCOURT : Et.... Pardon?

LE TRIBUNAL : Non, je l'ai pas.

INTERPRETER: No, I - well, I don't....

LE TRIBUNAL : Bien, je veux dire...

DENIS RANCOURT : Bien, c'est à dire, je...

LE TRIBUNAL : ...je l'ai pas...

DENIS RANCOURT : ...vous ai donné le mien...

LE TRIBUNAL : Moi, je pensais que vous étiez
pour arriver avec une copie aujourd'hui là.

DENIS RANCOURT : C'est - je...

INTERPRETER: I thought you were going to arrive
with a copy here today.

LE TRIBUNAL : C'est pour ça j'ai pas imprimé les
choses là, mais ce que je veux dire, c'est
combien qu'il y a de causes quand vous réferez -
auxquelles vous réferez?

INTERPRETER: I didn't print anything off. What
I'm asking you is how many cases are you
referring to that you need to print off?

DENIS RANCOURT : J'ai pas compté puis je suis
encore en train de décider, mais la grande
question limitation, y'en aura, je ne sais pas...

INTERPRETER: I haven't counted and I'm still
deciding but with regards to limitation, there
will be - I don't know....

LE TRIBUNAL : Non, mais est-ce que vous avez
revu ceux de monsieur - premièrement...

DENIS RANCOURT : Oui.

LE TRIBUNAL : ...est-ce que vous avez revu ceux
de monsieur Dearden?

DENIS RANCOURT : Oui.

LE TRIBUNAL : Vous avez pas à répéter ceux qu'il
a là parce...

DENIS RANCOURT : C'est ça.

LE TRIBUNAL : ...que y'en a peut-être qui se répète.

INTERPRETER: But have - first off, have you seen Mr. Dearden's case law? You don't need to take those up again.

DENIS RANCOURT : Mais parce que on prépare en parallèle, y'en a certain qui sont les mêmes, c'est sûr.

INTERPRETER: Well, because we are preparing in parallel, there are certain ones that are the same.

LE TRIBUNAL : C'est ça je veux dire.

DENIS RANCOURT : Oui.

LE TRIBUNAL : Donc, vous êtes pas obligé de les mettre dans votre - dans le vôtre, mais ça va prendre - ça va nous prendre un livre comme ça. C'est la seule façon qu'on peut opérer en cour.

INTERPRETER: So, that's what I'm saying, you don't need to put them in to yours but we will need a book like this. That's the only way we can operate in court.

DENIS RANCOURT : Parce que j'ai, j'ai, j'ai...

INTERPRETER: I have, I have, I have...

MR. DEARDEN: Well, Your - Mr. Rancourt, if I could just a sec.

DENIS RANCOURT : J'ai - non, j'ai pas fini.

INTERPRETER: No, no, I'm not finished.

MR. DEARDEN: I'm not saying this for this litigation by proxy motion, Your Honour. I'm okay with Mr. Rancourt sent me an electronic copy of his book, of his authorities, for today.

THE COURT: So, we'll proceed with this...

MR. DEARDEN: I'm talking future.

THE COURT: ...this way on the...

MR. DEARDEN: Yeah, I'm okay with that, because I've, you know, went to the effort of printing out his copies...

THE COURT: Ah, okay.

MR. DEARDEN: ...and I have them. So, I'm not saying that...

LE TRIBUNAL : Donc, mais pour les autres...

INTERPRETER: But for the other ones.

MR. DEARDEN: ... for today.

THE COURT: Okay.

MR. DEARDEN: Future.

LE TRIBUNAL : Pour le future là, si on a des arguments, comme si on discute, avant que le jury - que je donne mes directives au jury, on va avoir la chance - je vais vous remettre une - un ébauche et puis, vous allez pouvoir l'argarder puis si vous avez des représentations à faire sur des choses que j'ai pas dis, mal dis ou omis de droit là...

DENIS RANCOURT : Oui.

LE TRIBUNAL : ...à ce moment-là, vous pourrez - mais là, il faudrait que vous ayez un livre pour...

DENIS RANCOURT : À ce moment-là?

LE TRIBUNAL : À ce moment-là, mais...

DENIS RANCOURT : Oui.

LE TRIBUNAL : ...pour la motion là maintenant là, on va procéder de cette façon-là ici. Okay.

INTERPRETER: For the future, if there are

arguments, if we're discussing before the jury, that I - before I give my charge to the jury, I will give you a draft. You'll be able to look at it, and if you have any submissions to make on any points that I said or omitted or didn't state properly, pertaining to the law, you will be able to - but then you will need - you'll need a book at that time. At that time, but for now, for the motion, we'll proceed as we are now.

DENIS RANCOURT : Est-ce que vous voulez mon, mon DVD? Est-ce que ça vous aide?

INTERPRETER: Do you want the DVD?

LE TRIBUNAL : Ah, bien, oui, bien, oui. Donnez-moi votre DVD, oui.

INTERPRETER: Oh, yes.

DENIS RANCOURT : Alors, le voici.

INTERPRETER: All right, so here it is.

DENIS RANCOURT : Est-ce que monsieur Dearden veut une copie?

INTERPRETER: Mr. Dearden, does he want a copy?

MR. DEARDEN: Yes, please.

DENIS RANCOURT : Oui? Voilà.

LE TRIBUNAL : Est-ce que vous...

DENIS RANCOURT : Et puis...

INTERPRETER: There you go.

LE TRIBUNAL : ...avez-vous - okay. On a ici les - ceux qui sont là-dedans sont ici...

INTERPRETER: Okay. So, did you - okay, so we have here - we have those that are in there?

DENIS RANCOURT : Oui.

LE TRIBUNAL : ...là?

5
DENIS RANCOURT : Oui, y'a un index sur la première page et ensuite, y'a le DVD qui contient un seul fichier, pdf, et y'a des onglets électroniques. Je sais pas si vous utilisez ça, mais y'a des onglets électroniques qui permet de...

10
INTERPRETER: Yes, there's an index on the first page and then there's a DVD that has only one file, a pdf file, and you have electronic tabs. I don't know if you use that but they're electronic tabs.

LE TRIBUNAL : On va se débrouiller.

DENIS RANCOURT : ...d'aller à un.

INTERPRETER: Well, we'll work it out, you know?

15
LE TRIBUNAL : Bon.

DENIS RANCOURT : Puis j'ai - oui. Et puis, voilà. Merci.

INTERPRETER: All right, so, okay. Thank you.

20
MR. DEARDEN: Your Honour, maybe my recollection's off a bit but I thought we agreed that we were gonna argue the litigation by proxy motion at one thirty today? So, I have another briefcase back at the office...

THE COURT: Well...

25
MR. DEARDEN: ...it has my argument but I can hand to Your Honour a compendium of argument that I'm gonna rely on to expedite my argument on this and wonder...

THE COURT: Well, we can break...

30
MR. DEARDEN: Well, I need...

THE COURT: ...until two then.

MR. DEARDEN: Okay.

THE COURT: And we'll start this at two. At two, everybody will be ready at two. All right.

DENIS RANCOURT : Attendez, Monsieur le juge?

INTERPRETER: Just a moment, Your Honour?

LE TRIBUNAL : Oui?

DENIS RANCOURT : Étant donné que on a soumis nos *factums* exactement en même temps, moi aussi j'ai préparé un, un *brief* de arguments qui est, en partie, en réponse au *factum* de...

INTERPRETER: Well, given that we gave our *factums* at the same time, I also have prepared an argument brief, which is in part reply to Mr. - the *factum*...

LE TRIBUNAL : D'accord. D'accord.

INTERPRETER: Yeah. Yeah.

DENIS RANCOURT : ...monsieur...

LE TRIBUNAL : Oui, oui, donnez-moi le là puis on...

INTERPRETER: All right, all right. Give it to me.

DENIS RANCOURT : Donc, je vous donne une copie de ça. Et j'aimerais juste clarifier, si je pouvais, si je comprends bien, ce *voir dire*, c'est un peu la motion de monsieur Dearden.

Donc, il va passer en premier, c'est ça?

INTERPRETER: So, I have a copy of it. And I would also like to clarify, if I can, if I understand correctly, this *voir dire* will be Mr. Dearden's motion. So, he will go first, right?

LE TRIBUNAL : Oui.

INTERPRETER: Yes.

DENIS RANCOURT : Okay, merci.

Représentations par Denis Rancourt
Submissions by Mr. Dearden

LE TRIBUNAL : Il vont dire pourquoi que le jury
- ce n'est pas une défense qui était disponible
donc, pourquoi je devrais pas la soumettre au
jury puis vous, vous allez me dire pourquoi oui,
je devrais la soumettre au jury.

INTERPRETER: He's going to tell me why the jury,
that this is not a defence that is available and
why it shouldn't be presented to the jury and
you're gonna tell me why, yes, I should allow it
to go to the jury.

DENIS RANCOURT : Merci.

LE TRIBUNAL : Puis après ça, je décide. Okay?

INTERPRETER: All right?

DENIS RANCOURT : Merci. Deux heures p.m.?

LE TRIBUNAL : Deux heures.

DENIS RANCOURT : Merci.

LE TRIBUNAL : Quatorze heures.

INTERPRETER: Two o'clock.

DENIS RANCOURT : Quatorze heures.

INTERPRETER: Two o'clock. Fourteen hundred
hours.

R E C E S S

U P O N R E S U M I N G :

THE COURT: All right. I'll hear you then, Mr.
Dearden.

MR. DEARDEN: Thank you, Your Honour.

SUBMISSIONS BY MR. DEARDEN:

MR. DEARDEN: I have three points of argument,

Your Honour, the first being that the defendant hasn't fulfilled the requirements of section 32 of the *Charter* and that's the only way you can argue that you've got some kind of *Charter* protection is get through the constitutional gateway of section 32 of the *Charter*. The second point, Your Honour, is it's perfectly legitimate for a government employer to pay the legal fees of an employee to sue for libel and I'll be relying on Hill v. Church of Scientology as the prime authority for that, a Supreme Court of Canada decision. And Your Honour, the third point, and one, I must say, I submit that the fact that Mr. Rancourt is arguing this unknown defence in Canadian law at the trial, after the factual findings made by Justice Smith dismissing Mr. Rancourt's abuse of process motion is an abuse of process in itself. It's a collateral attack on Justice Smith's findings factually and legally. He is stopped from arguing these issues and then the general concept of abuse of process. To bring this to - at this stage and to argue again in essence that Professor St. Lewis is a proxy for the University of Ottawa and isn't bringing this libel action to protect her reputation is an abuse in itself but I'll take you to the findings of Justice Smith when I make my third point of argument. So, Your Honour, you can make a note on the first point that the University of Ottawa is not government, as required by section 32 of the *Charter*.

DENIS RANCOURT : Excusez-moi.

MR. DEARDEN: I've dealt...

DENIS RANCOURT : J'ai, j'ai admis ça. Je sais pas si vous avez vu dans mon...

MR. DEARDEN: No. Excuse me.

DENIS RANCOURT : ...dans mon *reply*. J'ai déjà admis...

THE COURT: No, but it...

INTERPRETER: I'm sorry. I admitted that. I don't know if you saw that in my factum.

LE TRIBUNAL : Ça serait mieux, monsieur Rancourt, que vous interveniez pas. Vous pourrez - on pourra - vous pourrez le mentionner et si c'est - vous pourrez le mentionner à - quand vous reviendrez. Je vous dirais, ça, c'est pas une question en litige. Je suis d'accord, etcétera. Ça serait mieux, sans ça, on va...

INTERPRETER: It would be better, Mr. Rancourt, for you not to intervene. You will have an opportunity. You can mention it and if - you can mention when you return. You can say that's not an issue. It would be better, because otherwise...

DENIS RANCOURT : Oui. Je voulais simplement simplifier pour pas que monsieur Dearden ait besoin de faire...

INTERPRETER: I simply wanted to simplify...

MR. DEARDEN: No, you're not simplifying anything.

DENIS RANCOURT : ...cet argument.

MR. DEARDEN: You're not simplifying.... Your

Honour...

THE COURT: No, no, don't talk to each other...

MR. DEARDEN: Sorry.

THE COURT: ...but go on - yeah. Go on.

MR. DEARDEN: Yes, thank you, Your Honour.

DENIS RANCOURT : Excusez-moi.

MR. DEARDEN: So, I'm just trying to tell Your Honour that at this point, the University of Ottawa's not government, as required by section 32 of the *Charter* is in my factum at paragraphs 8 through 36 and Your Honour, I - you have my compendium. Do you have my compendium of arguments that I handed up? So, you'll see at Tab 1, Your Honour, section 32 of the *Charter*. This is all the *Charter* applies to at Tab 1, section 32, it's to the Parliament Of Government of Canada and (b), it's to the legislator - the legislature and government of each province. He doesn't get past section 32 of the *Charter*. So, let's look quickly, Your Honour, if we could, at what he pleads and I've set out the paragraphs 61 through to 67 in Tab 2 of the compendium, but I ask Your Honour to turn to paragraph 63, his *Charter* of pleading and he's stuck with these pleadings. "It's inconsistent with section 2(b) of the *Charter* for a government entity, such as a school board or university, to use government funds or tuition monies to enable a civil action for defamation by an employee having acted improperly or contrary to professional ethics against a citizen to inhibit justified criticism

of the entity's institutional government activities including those of the employee. Universities are only granted independent status by the Supreme Court in order to effectively defend the academic freedoms of their professors and students in order to allow the protected criticisms of society's institutions including universities." Paragraph 64 of the defence, "It is essential that citizens be granted an absolute privilege against the threat of civil action, the defamation being initiated against them by their government directly or indirectly." So, Your Honour, the test has reason - for when the *Charter* applies to a private entity like a university, I think the most recent decision is one that I argued on behalf of Carleton University first before Justice Rocco and then up to the Court of Appeal and you'll see the Court of Appeal's decision in Tab 3 of the compendium. And what was at issue here, Your Honour, is that Pro-Life students at Carleton University, wanted to display their genocide placards at a location on campus that they chose, which was the Tory Quad and the university did not allow them to display those genocide placards there. They gave them another spot, so they argued their section 2(b) *Charter* rights were infringed and we successfully argued that Carleton University was a private entity, not a government entity, and it wasn't implementing any specific government program. And that's the

test, Your Honour, that you'll see at paragraph three of the Court of Appeal's decision at Tab 3 of my compendium. It's the - it - the Court of Appeal's quoting the Supreme Court case in *Eldridge*, explained that,

The *Charter* may be found to apply to a private entity on one of two bases [sic]. First, it may be determined that the entity is itself government for the purposes of section 32 of the *Charter*. Second, an entity may be found to attract the *Charter* scrutiny with respect to a particular activity that can be ascribed to government. As to the first basis, the appellants concede that the respondent was not government for the purposes of section 32 of the *Charter*. Rather, as noted earlier, they argued that the respondent is implementing a specific government program and that program is the delivery of post and secondary educations. The actions of the respondent such as the - as limiting - of the respondent, such as the limiting of the appellant's right to freedom of expression were, according to the appellants, actions taken by the university in the course of delivering a government program.

And if you drop down to paragraph 4, Your Honour, the court holds,

5 We disagree as explained by the motion
judge when the university booked space for
non-academic extra-curricular use. It is
not implementing a specific government
policy or program that's contemplated in
Eldridge. In carrying out this particular
activity, there is therefore no triable
issue as to whether *Charter* scrutiny
10 applies to the respondent's actions.

15 And Your Honour, that's exactly the case with
respect to the act that is at issue here. Small
A, act, and that act is that President Allan Rock
agreed to fund an employee's libel action. Okay?
That particular act of Allan Rock to agree to
have the university reimburse Professor St.
Lewis' legal fees for this libel action is in no
way a specific government policy or programming
and the - sorry, Your Honour. And to add on to
20 that point, Your Honour, I've set out in the
factum at paragraphs 37 to 44, that governments
can fund an employee's libel action and I ask
Your Honour to turn to Tab 7. So, paragraphs 37
to 44 of my factum deal with this point, which is
25 an additional point on whether there's any
Charter application in the libel context. And in
Hill v. Church of Scientology, the Court of
Appeal dealt with this at compendium Tab 7. So,
this is Justices Catzman, Griffith and Galligan
and I'm asking Your Honour to turn to paragraph
30 94 of Tab 7, which is the Court of Appeal dealing

with the Church of Scientology's *Charter* argument.

Further, we do not perceive the evidence that the Government of Ontario provided financial assistance to Casey Hill in respect of the conduct of this proceeding as either relevant or determinative of the Charter issue. The payment of Casey Hill's legal fees by the government does not effect a change in his constitutional status or somehow convert his lawsuit into an act of government. In *McKinney*, the dependency of the universities upon government funding to finance their activities, including, presumably, their legal costs in defending the challenge to their mandatory retirement policies, was viewed as neither relevant nor determinative. The test was whether the universities formed part of the government apparatus and whether they were implementing a government policy in establishing mandatory retirement. Casey Hill's libel action cannot be characterized as an implementation of government policy.

And then the Supreme Court of Canada puts it in even stronger terms, Your Honour, at Tab 5 of the compendium, starting at paragraph 70. The Supreme Court in paragraph - sorry, Your Honour.

THE COURT: At tab?

MR. DEARDEN: Tab 5.

THE COURT: All right. I have it now.

MR. DEARDEN: At paragraph 70, Supreme Court case now.

THE COURT: Mm-hmm.

MR. DEARDEN:

The appellants argue that, at all material times, Casey Hill was an agent of the Crown, acting on behalf of the Attorney General of Ontario, and that the defamatory statements, which are the subject of the present action were made in relation to acts undertaken by him in that capacity. They further submit that Casey Hill commenced these legal proceedings at the direction and with the financial support of the Attorney General in order to vindicate the damage to the reputation of the Ministry resulting from criticism levelled at the conduct of one of its officials. It therefore contended that this action represents an effort by a government department to use the action of defamation to restrict and infringe the freedom of expression of the appellants in a manner that is contrary to the Charter. These submissions cannot be accepted. They have no legal, evidentiary or logical basis of support. Casey Hill's constitutional status for the purpose of

5 the application of the Charter should not
be determined by the nature of the
allegations made against him. Rather, the
determination of whether state involvement
existed is dependent upon the
circumstances surrounding the institution
of the libel proceedings.

10 And then the last paragraph, I draw your
attention to, Your Honour, is paragraph 75 at the
next page of Supreme Court's decision.

The appellants...

15 That's the Church of Scientology and Morris
Manning,

...impugned the character, competence and
integrity of Casey Hill, himself, and not
that of the government. He, in turn,
responded by instituting legal proceedings
20 in his own capacity. There was no
evidence that the Ministry of the Attorney
General or the Government of Ontario
required or even requested him to do so.
Neither is there any indication that the
25 Ministry controlled the conduct of the
litigation in any way. Further, the fact
that Casey Hill's suit may have been
funded by the Ministry of the Attorney
General does not alter his constitutional
30 status or cloak his personal action in the
mantle of government action.

5 So, Your Honour, the defence of or the so-called
defence, I should say, of litigation by proxy,
contrary to the *Charter* does not exist in
Canadian law. It's based on the false premise
that the University of Ottawa is government or
that U of O is implementing a specific program
when President Rock agreed to pay an employee's
legal fees to sue Mr. Rancourt for defamation.
10 And the compendium that - of argument that Mr.
Rancourt handed up at the lunch break, paragraph
1, he says, "The defendant admits...

THE COURT: Oh, I'll - just...

MR. DEARDEN: ...sorry, Your Honour.

THE COURT: ...hold on here.

15 MR. DEARDEN: Yeah, the compendium, paragraph 1.

THE COURT: Yes.

MR. DEARDEN: He admits, "In the factual
circumstances of the present action and for the
purposes of the applicability of the *Charter*, the
20 University of Ottawa is not a government entity
and was not implementing a government policy or
program." So, he can't use the *Charter*. You
have to have either a government entity or a
private entity implementing a specific government
25 program to engage the *Charter* with a private
entity like U of O or like Carleton University
and he fails to meet those constitutional
requirements and admits it in paragraph one of
his compendium. The *Charter* has no application
30 to President Rock's decision that U of O will pay
the legal fees of Professor St. Lewis' lawyers in

this libel action. If you don't have a government entity, Your Honour, or you prove there's a specific government program - and the Supreme Court decision on that actually underlines the word "specific government program", then you don't have any *Charter* right to invoke against that private entity. So, in Carleton University's case, the students were arguing that the specific government program was to provide post-secondary education to students. And the Court of Appeal and Justice Rocco said, "Look, that's just too broad. That is not a specific government program that Carleton University is implementing. All the universities are there to provide post-secondary education, but where's the specific program?" And of course, here, Allan Rock, the president of the university, is simply agreeing to fund an employee's libel action, which is perfectly legitimate according to the Supreme Court, perfectly legitimate to do that. Then, the *Charter* just has no application, Your Honour. None. And the second point, Your Honour, is I want to draw your attention to the decision of Justice Carruthers. It's found at Tab 6 of the compendium. Again, it deals with a trial judge and the Church of Scientology lawsuit where that jury awarded 1.6 million dollars in damages back in 1992. The Church was - you'll see at paragraph 8 of Tab 6, Your Honour, that what the Church of Scientology was alleging against the

Ontario Government and against Casey Hill, so they issue a press release and attack the funding that the government was, you know, the fact that the government funded Casey Hill's lawsuit and I've highlighted one part of that press release where they say Hill's funding was exposed in the legislature by MP Bob Runciman as a - kind of \$47,807 of Hill's legal fees were included in the larger sum paid to the firm of Tory, Tory with a cheque, which was labelled travel claims, et cetera, et cetera. They go on and are attacking the fact that the legal fees were paid for by the Government of Ontario and Justice Carruthers at paragraph 12 in his decision, he notes that - and you'll look at what I've side barred there, Your Honour, in paragraph 12,

I note here that during the course of the trial, I also concluded that the details of the plaintiff's arrangements with his employer made in 1988 or thereabouts concerning the costs incurred by him in proceeding with this action were not relevant.

So, who pays my fees is not relevant in this libel action. And Justice Smith repeated that finding and made it himself in a cost decision he made in Mr. Rancourt's champerty motion. If you look at Tab 8, Your Honour, it's Justice Smith's cost decision, paragraph 16. Justice Smith quotes the Supreme Court of Canada's decision in Church of Scientology and notes that it was

entirely funded by the Ministry of the AG of Ontario. The Supreme Court upheld the ruling,

The details of the plaintiff's arrangement with his employer concerning the costs incurred by him in the legal proceeding were not relevant to the libel action.

For the same reasons as set out in my previous decisions in St. Lewis v.

Rancourt, I find that the arrangements between St. Lewis and the university as to the payment of cost and the university's right to recover costs awarded to St.

Lewis in the proceeding are not relevant to the libel action and do not prevent the awarding of costs to the successful parties on the motion.

So, to sum up those two points, Your Honour, the *Charter's* not engaged at all, so there's no freedom of expression right that can be invoked against the University of Ottawa or Professor St.

Lewis in the so-called litigation by proxy defence and not only that, this defendant can't even raise, as a relevant issue during the trial, that the costs were paid by the University of

Ottawa. My third and final point, Your Honour, dealing with issue of estoppel, collateral attack and abuse of process, I've set that out in my factum at paragraphs 45 to 61. And in short,

Your Honour, 'cause I won't repeat all three. On all three basises [*sic*], you can find that what the defendant is attempting to do here is either

5 a collateral attack, he's issued estoppel or it's
an abuse of process, because what he's really
doing is just framing his abuse of process motion
that was dismissed by Justice Smith, his appeal
was dismissed by the Court of Appeal and his
leave application to the Supreme Court of Canada
was denied. Okay? Let's remember that he's
framed that motion before Justice Smith as an
abuse of process motion based on a champ - an
10 alleged champertous agreement but in the - it was
an abuse of process motion that he brought to
have this action struck out and that's what he's
trying to do by re-framing and dressing up, in a
different way, some unknown defence called a
15 lawsuit by proxy contrary to the *Charter*. And I
think what's important, Your Honour, is that I
highlight a few of the findings that Justice
Smith made in that abuse of process motion that
he dismissed by Mr. Rancourt and I've set out
20 passages of his finding where he found no
champerty or maintenance on the part of the
University of Ottawa. And that's at Tab 9 of the
compendium. So, Your Honour, if you turn to Tab
9 paragraph, starting at paragraph 72 of Justice
25 Smith's decision, Tab 9 of the compendium.

THE COURT: Yes. Mm-hmm.

MR. DEARDON: So, in paragraph 72, Justice Smith
holds,

30 Rancourt submits that the university's
real motive for funding St. Lewis'
defamation against him was to persecute or

5 harm him. Justice Beaudoin has already ruled that the evidence by which Rancourt sought to establish the real motive for the university funding the litigation of the plaintiff is to persecute, harm and/or suppress the defendant and as such, the action is vexatious and abuse of process was irrelevant and inadmissible on the champerty motion. As a result of his finding, the issue has been decided by Beaudoin, J. and therefore, I find there is no material conflict in the evidence, which requires a trial of the issue. Even if....

15 Okay? So, this is what Mr. Rancourt wasn't allowed to have admitted but Justice Smith says, Even if those affidavits of April 23rd and May 23rd were admitted, I conclude there is no conflict in material - in the material evidence related to the plaintiff's motive for commencing litigation against Rancourt. The plaintiff's uncontradicted evidence is that she decided to commence action against Rancourt to protect her reputation and that decision was not made by the university. With regards to Rancourt's submission that there is a conflict in the evidence over President Rock's motive for funding St. Lewis' defamation action, I find that even if the subsequent

5 affidavits were considered, there is
simply no evidence, that Rancourt has
produced, showing that the university had
an improper motive for funding an
employee's defamation action other than
his speculation about a possible, improper
motive because he is in a labour dispute
with the university. I am also not
10 satisfied that there is a conflict in the
evidence related to the motive by
President Rock.

And then if you go down to the bottom, the last
sentence of paragraph 76,

15 There is only mere speculation by Rancourt
that the university agreed to fund St.
Lewis' defamation action for an improper
purpose or improper motive.

And then, if you go to paragraph 83, Your Honour,
on the next page at the bottom under the heading,
20 "Officious Intermeddling",

The uncontradicted evidence of St. Lewis
and Dean Feldthusen was at...

25 THE COURT: I'm sorry, you turned to what now?
I'm sorry...

MR. DEARDEN: Sorry, Your Honour. Paragraph 83,
same tab, Justice Smith's decision.

THE COURT: Eighty-three? Okay.

MR. DEARDEN: Eighty-three. Under the heading,
30 "Officious Intermeddling".

THE COURT: Fine.

MR. DEARDEN:

The uncontradicted evidence of St. Lewis and Dean Feldthusen was that St. Lewis had decided to sue Rancourt for defamation before she asked the university to pay for her legal fees to do so. Dean Feldthusen supported St. Lewis' request for funding and arranged a meeting with the president of the university. President Allan Rock agreed on behalf of the university to pay St. Lewis' legal costs to sue Rancourt for defamation to protect her reputation as an employee of the university. In Hill v. Church of Scientology, the Supreme Court of Canada found no impropriety in Government of Ontario funding an employee's libel action against a private entity. The University of Ottawa is a private entity and it's not a governmental body. However, it does receive grants from governments. The reason the university agreed to pay St. Lewis' legal costs for her libel action were set out in the letter from the university's counsel, David Scott, which were referred to in the facts above. The relevant parts of the university's reasons were that the alleged defamatory remarks about St. Lewis were occasioned by work, which she undertook at the request of the university and in the course of her duties and responsibilities

as an employee of the university. Her efforts were not personal, but in the interests of the university. Furthermore, the racist attack upon her took this case out of the ordinary and in the view of the university, created a moral obligation to provide support for her in defence of her reputation. The uncontradicted evidence before me is that the university agreed to pay an employee's legal fees, in this case Professor St. Lewis, to fund her libel action, which was commenced to defend her reputation. I therefore find that the university's agreement to fund an employee's defamation action does not, as was the case in Hill v. Church of Scientology, constitute officious intermeddling in litigation as St. Lewis had decided to sue Rancourt for libel to protect her reputation before the university agreed to fund her legal fees. Paragraph 87, under "Legitimate reason or justification for assisting St. Lewis or improper purpose." Paragraph 87,

Rancourt speculates and alleges that Allan Rock, as president of the university, had an improper motive for funding St. Lewis' libel action against him. He alleges that the university agreed to fund her defamation action in order to stigmatize and silence him after the university

5 dismissed him from his full tenured
professorship on April 1st, 2009. There
can be no maintenance if the university
had a legitimate reason or justification
for assisting the litigant. The evidence
is uncontradicted from President Rock, Mr.
Giroux, who's the chair of the Board of U
of O, Dean Feldthusen and St. Lewis, that
10 the university's reasons for assisting St.
Lewis by paying her legal fees was to
defend her reputation. The reasons were
set out in the letter from counsel, David
Scott, mainly because her reputation was
attacked during the course of her
15 employment by the university and also
because the university felt it had a moral
obligation to assist her to defend her
reputation in these special circumstances
from a racist attack.

20 He then cites the Hill v. Church of Scientology
passage that I referred Your Honour to earlier
and in paragraph 90, the Supreme Court states,
These submissions cannot be accepted.
They have no legal, evidentiary or logical
25 basis of support. The appellant's
impugned the character, confidence and
integrity of Casey Hill himself and not
that of government. He, in turn,
responded by instituting legal proceedings
30 in his own capacity. In Hill v. Church of
Scientology, the Government of Ontario

paid the legal costs for one of its Crown Attorneys, Casey Hill, to fund a libel action against the Church of Scientology. Rancourt is speculating that the university had other improper motives, namely to silence him. However, they're not supported by any evidence as his allegation, denied by President Rock, by St. Lewis, by Dean Feldthusen and by Mr. Giroux. The university does not deny that it terminated Rancourt and he's involved in a labour arbitration with his union to determine whether his dismissal was justified. This is a separate issue and does not constitute evidence of improper motive on the part of the university. Rancourt's speculation that the university agreed to pay St. Lewis' legal costs of her defamation act in order to silence and stigmatize him is unsupported by any evidence. Even if the April 23rd and May 23rd affidavits were considered, I find that the evidence introduced by Rancourt does not contradict the evidence of Mr. Rock, Ms. St. Lewis, Dean Feldthusen, or Mr. Giroux with regard to the - with regards - with the reasons the university agreed to fund St. Lewis' defamation action against the defendant. As a result, there is no issue of credibility on these matters that require a trial to

be initiated.

Paragraph 93,

The situation for St. Lewis is very similar to those in the case of Hill v. Church of Scientology. Ms. St. Lewis was an employee and made her own decision to commence a libel action to defend her reputation and the university, as her employer agreed to pay her legal costs because her reputation was damaged in the course of her employment. I find that the university had a legitimate reason for assisting St. Lewis and there is no evidence that the university agreed to fund St. Lewis' libel action for an improper purpose or based on an improper motive.

And then the last point I'll draw your attention to, Your Honour, only because in what you're about to hear from Mr. Rancourt, he's gonna - you'll recall he talked at the - where were we at when you were involved? May 7th, when we had a trial management conference on May 7th, he mentions this scholarship fund that some of the punitive damages would be donated to by Professor St. Lewis, as set out in her Statement of Defence and Justice Smith deals with this at paragraph 96, because you had to have an agreement between the university and Professor St. Lewis that they would share in the proceeds of the litigation and there was no such agreement found but Justice

Smith held at paragraph 96,

Professor St. Lewis decided, when issuing her Statement of Claim, that half of any punitive damages awarded would be paid to a scholarship fund. Her Statement of Claim was issued after the university agreed to pay for her legal costs. St. Lewis' unilateral decision to donate a share of the punitive damages awarded to a scholarship fund, administered through the university, does not constitute a contractual agreement to share in the proceeds. This proposal could be unilaterally revoked by St. Lewis at any time.

And then he finds there is no agreement. So, Your Honour, under all three categories, issue estoppel, collateral attack and just a straight out abuse of process attempt to re-litigate the issue of motive of the funding of this libel action and attempts by the university to silence the defendant, have been finally decided by Justice Smith and upheld all the way up to the Supreme Court of Canada. There's no litigation by proxy here. This is solely about the restoration of Professor St. Lewis' reputation and that's what Justice Smith found in categorical terms. You'll see, Your Honour, if you look at Tab 2 of the Statement of Defence, Tab 2 of the Statement of Defence, paragraph 67, the pleading there is, "The instant action is

intended to punish, intimidate and silence the defendant, a vocal, responsible and dedicated critic of many powerful groups, institutions in the University of Ottawa regarding matters of public interest." That is directly contrary to paragraphs 71, 72, 87, 91 through 93 of Justice Smith's decision that I just highlighted for you. Paragraphs 71, 72, 87 and 91 through 93. Some, to the extent that Mr. Rancourt somehow thinks that this Danny Glover Scholarship Fund, that's referred to in the Statement of Claim for the punitive damages donation, has anything to do with the so-called litigation by proxy defence, Justice Smith is - absolutely blew that away in paragraph 96 of his decision. This is nothing but an attempt to re-litigate what took, I think, over a year to get Justice Smith to decide. In fact, the motion for - to dismiss the action as an abuse of process was brought in January of 2012 and Justice Smith decided that motion in March of 2013. So, a year and a quarter later and then, of course, we had the delay of an appeal to the Court of Appeal and then another delay of seeking leave to the Supreme Court of Canada, which was denied with solicitor/client costs. So, Your Honour, I'm requesting a ruling that the defendant cannot, at trial, attempt to adduce evidence about the issues that arise out of paragraphs 61 to 67 of the Statement of Defence for all the reasons I've just argued. Completely, there's no such defence in law and

Submissions by Mr. Dearden
Représentations par Denis Rancourt

5 secondly, it's totally irrelevant. Can you
imagine the circus that we would have in this
trial, Your Honour, if Mr. Rancourt started
asking Allan Rock, the President of the
University of Ottawa about his arrest on campus
and whether there was a psychiatric evaluation
done about him and - it just boggles my mind.
This is a libel action by Professor St. Lewis
that's been found, hands down, by Justice Smith
10 and upheld by every appellate court there above
him and that's what we're trying to try here.
Not re-litigating motive, which was done in the
year and a quarter that it took to get a decision
from Justice Smith. So, subject to any
questions, Your Honour, that completes my
15 submissions.

THE COURT: All right. Thank you.

LE TRIBUNAL : Monsieur Rancourt?

INTERPRETER: Mr. Rancourt?

20 DENIS RANCOURT : Oui? Merci, Monsieur le juge.

INTERPRETER: Thank you, Your Honour.

REPRÉSENTATIONS PAR DENIS RANCOURT :

25 DENIS RANCOURT : Évidemment, je, je, je peux pas
être aussi efficace que monsieur Dearden dans
tout, mais je vais faire de mon mieux. Alors, je
vais commencer avec mon - le *factum* que je vous
ai donné. Alors...

30 INTERPRETER: Obviously, I cannot be as efficient
as Mr. Dearden in everything but I'll do my best.
So, I will start with my *factum* that I gave you.

MR. DEARDEN: Sorry, Mr. Rancourt. I just need to plug in here. On three? Oh, we changed? We changed channel, Your Honour, and they didn't tell me.

INTERPRETER: Sorry about that. One, two. One, two.

MR. DEARDEN: It's not coming through. I think they're yelling at me but I can't hear them.

INTERPRETER: One, two. One, two.

MR. DEARDEN: Okay, got it now.

INTERPRETER: Okay.

THE COURT: Got it now?

LE TRIBUNAL : Bon. Alors, allez-y, monsieur Rancourt.

INTERPRETER: Okay. So, go ahead, Mr. Rancourt.

DENIS RANCOURT : Les quelques derniers commentaires de monsieur Dearden rendent ça très clair qu'il veut un ordre pour exclure plusieurs lignes d'évidence que je pourrais amener et cette - ce demande d'ordre, il l'a pas du tout mentionné dans son *factum*. Donc, c'est - mais, mais de toute façon, c'était assez clair que c'était la direction dans laquelle il s'en allait. Alors, je commence avec mon *factum*, qui est un document que vous avez devant vous, qui s'intitule « *Defendant's factum voir dire on proxy defence* », qui est un document de 14 pages. Et je vais commencer à la - à la page 3, parce que vous, vous voyez, je divise mon argument en quatre parties, que j'ai expliqué dans le - la page de « *Overview* » Dans la, dans la première

partie, je vais exprimer - je vais expliquer que il y a une défense admise dans le *common law* qui permet une réponse à une demande en diffamation où il y a pas ou très peu de dommages réels, des dommages réels et donc, je vais expliquer ça et ensuite, deuxièmement, je vais faire le point que moi, ce que j'ai plaidé, c'est un abus de processus, mais qui est distinct de maintenance et champartie, qui est déjà réglé. Troisièmement y'a le point que monsieur Dearden essaye essentiellement de enlever - *to strike* - mes, mes, mes paragraphes de plaidoirie et que ça, ça demande un test qui est très exigeant et quatrièmement, je vais dire qu'il n'y a pas de *res judicata* et je vais expliquer pourquoi il n'y a pas de *res judicata*. Donc, mon argument se divise en quatre parties de cette façon-là. Alors - et j'ai organisé mon *factum* exactement selon ces quatre parties. Alors, vous...

INTERPRETER: The last few comments from Mr. Dearden makes it very clear that he wants an order to exclude quite a few sentences of evidence that I might bring so this order, he never mentioned in his factum, but it was quite clear that that's the direction he was heading in. So, let me start with my factum, which is the document you have in front of you, defend.... That's the name of it. A 14-page document. Defendant's factum. So, let me start at page 3. Why? Because I'm dividing my argument in four components and the overview page will explain

5 that. The first part, I will explain that there
is a defence known in common law that allows a
reply to demand in liable when there's very few
or no real damages, so I will explain that. Then
10 I will explain that, for myself, what I pled was
an abuse of procedure, of process, that was
distinct from maintenance and *champartie* that has
been dealt with. And the other point that Mr.
Dearden is trying to strike, that is my paragraph
of pleadings and that requires a very demanding
test and then I'll say that there's no *res*
judicata and I will explain to you why. So, I
have four components to my argument. So, and I
organized my factum exactly according to those
15 four parts.

LE TRIBUNAL : J'ai pas - pour une raison ou d'un
autre, j'en ai inque trois là.

INTERPRETER: So, for one reason or another, I
only have three.

20 DENIS RANCOURT : Et je, je peux les renommer.
Premièrement, il y a une défense qui est une des
défenses que je plaide, qui est abu de processus
parce que du simple fait qu'il n'y a pas de
dommages ou très peu de dommages réels dans
25 l'action de diffamation et je parle de dommages
dans l'action de diffamation et je parle de
dommages à la réputation et deuxièmement, c'était
l'idée que - oui, qu'il y a une telle défense
puis la deuxième, c'est que j'ai plaidé cette
30 défense-là. Je vais montrer que j'ai plaidé
cette défense-là. La troisième, c'est que on ne

5
veut pas enlever des paragraphes dans le
Statement of Defence comme ça sans un test très
exigeant et la quatrième, c'était que il n'y a
pas de *res judicata* et pourquoi il n'y a pas de
res judicata.

10
INTERPRETER: Okay, I could go through them
again. First of all, the defence - one of the
defence that I'm pleading, abuse of process,
given on the simple fact that there - no damages
or almost no damages, real damages, I mean, real
damages to the reputation and secondly, the idea
that, yes, that there is such a defence and the
second being that I did plead that defence. I
want to show that I did plead that defence.
15
Third, that you cannot strike paragraphs from
Statement of Defence like that without a very
stringent test and the fourth being that there is
no res judicata and I will explain why.

20
LE TRIBUNAL : Donc, un et deux là sont reliés?

INTERPRETER: So, one and two are related?

DENIS RANCOURT : Sont reliés intimement.

INTERPRETER: Yes, they are.

LE TRIBUNAL : Okay. C'est beau, c'est beau.

INTERPRETER: Okay, that's fine. Fine.

25
DENIS RANCOURT : Donc, je commence à, à la page
3 de mon *factum*. Je vous prie de regarder parce
que j'ai, j'ai imprimé les paragraphes des
autorités qui sont pertinents. Donc, à la page 3
30
de mon *factum*, au paragraphe 3 de mon *factum*,
j'explique que dans toutes causes de diffamation,
il s'agit fondamentalement la décision de celui -

5 du juge et du jury, c'est à savoir s'il y a cet
équilibre, c'est d'essayer de trouver un
équilibre entre le, le droit d'expression libre
dans la société d'une part, et la protection et
la réputation de l'autre part et là, je cite la
Cour suprême sur deux décisions sur, sur
exactement ce point-là. Donc, par exemple,
10 Gilles Néron Communication Marketing v. Chambre
des notaires du Québec, 2004, Cour suprême, on
dit au paragraphe 54 que...

INTERPRETER: So, let me start. Page 3 of my
factum please, look at this because I didn't -
did print the paragraphs of the case law that are
pertinent. So, I do explain that in any case of
15 defamation, fundamentally, the decision of the
judge, jury is to know if there is that - it's to
try and find a balance. Is there a balance and
can you find a balance between freedom of
expression in society on one side and protection
20 of one's reputation on the other part? So,
Supreme Court is then quoted on two of their
rulings on that, Gilles E. Néron, Communication
Moncton [sic] v. Champ [sic] des Notaires du
Québec, 2004, paragraph 54. Here's what it says,
25 in English.

DENIS RANCOURT: "Determining fault in a
defamation case is a contextual question of fact
and circumstances. In an action in defamation,
the two fundamental values of freedom of
30 expression and the right to respect for one's
reputation must be weighed against each other to

find the necessary equilibrium."

DENIS RANCOURT : Donc, ça explique ce qu'on - ce qu'on est en train de faire fondamentalement dans une cause en diffamation et le prochain paragraphe de, de, de Hill v. Church of Scientology, une décision de '95 de la Cour suprême dit essentiellement la même chose. Ça dit :

INTERPRETER: So, it explains what we're basically in the process of doing in the defamation code - case. So, the next paragraph, Hill v. Church of Scientology from '95, from the Supreme Court essentially says the same thing. It says, in English,

DENIS RANCOURT: "There can be no doubt that in libel cases, the twin values, values - *pas* rights, *mais* values of reputation and freedom of expression will clash. Whatever is added..."

DENIS RANCOURT : Et là, il cite une autre juge dans une autre cause.

INTERPRETER: And then he quotes another judge in another case and he says,

DENIS RANCOURT: "Whatever is added to the field of libel is taken from the field of free debate. The real question, however, is whether the common law strikes an appropriate balance between the two."

DENIS RANCOURT : Et ensuite, la Cour suprême, la même décision de *Hill*, je vais l'appeler simplement *Hill*, il explique :

INTERPRETER: And then, the Supreme Court, same decision from *Hill*, I'll just call it the Hill decision, he adds...

DENIS RANCOURT: "In conclusion, in its application to the parties in this action, the common law of defamation complies with the underlying values of the *Charter* and there is no need to amend it or alter it."

DENIS RANCOURT : Donc, il dit que habituellement et dans les circonstances de cette action-là, le *common law*, qui prévoit les, les, les défenses de *fair comment*, etcétera, trouve cet équilibre correctement. Okay? Mais ce qui est très important, c'est au paragraphe 5 de mon *factum* où là, je cite une autorité du *England and Wales Court of Appeal* où trois juges ont expliqué dans un cas où on disait que cet équilibre, qu'il fallait trouver, était brisé et il était brisé dans un cas parce que on - il n'y avait très peu ou pas de dommages réels à, à la réputation et les juges ont trouvé, dans ce cas là, en 2005, dont c'est Dow Jones Incorporated v. Jameel. On pourrait l'appeler Jameel. Ils ont trouvé la chose suivante :

INTERPRETER: So, he says that, usually, and in circumstances of that case, the common law, which deals with fair comment, et cetera, does establish such an equilibrium and correctly does so. Well, what is very important is that paragraph 5 of my factum, where I quote England and Wales Court of Appeal, where three judges

5 explain in a case where this equilibrium, that
had to be found, had been broken and it was
broken in a case. Why? Because there were very
little or almost no real damages to the
reputation. So, it's Dow Jones Incorporated v.
Jameel. We could call it Jameel. Here's what
they found, in English,

10 DENIS RANCOURT : "We accept that in the rare
case where a claimant brings an action for
defamation in circumstances where his
reputation has suffered no or minimal actual
damage, this may constitute an interference
with freedom of expression that is not
15 necessary for - that is not necessary for the
protection of the claimant's reputation."

LE TRIBUNAL : C'était quoi les faits là?

INTERPRETER: What were the facts there?

20 DENIS RANCOURT : Ah, c'était un cas où le, le -
la, la, la plein - le plaignant de - les
circonstances actuelles étaient que le, le
plaignant ne - on - ne - on pouvait argumenter
y'avait pas de dommages réels à la réputation.

25 INTERPRETER: Oh, it was a case where the
plaintiff - the circumstances of the facts were
such that the plaintiff, one could argue, that
there was no real damage to the reputation.

LE TRIBUNAL : Oui, mais c'est quoi les faits?
C'est...

30 DENIS RANCOURT : Je me souviens...

LE TRIBUNAL : ...qu'est-ce qui avait été dit
puis qu'est-ce que...

INTERPRETER: Well, what were the facts? What had been said and...

DENIS RANCOURT : Ah, je me souviens plus. Je m'excuse. Mais le, le, le point est que dans un cas comme ça, on dit et...

INTERPRETER: Oh, I can't remember any more. I'm sorry. But the point is, in a case like that...

MR. DEARDEN: Do you want to know, Your Honour?

THE COURT: Mm?

MR. DEARDEN: If you wanna know, just in brief, it's that the Wall Street Journal was sued in England. So, it's a libel tourism case, sued in England by Jameel over an article that suspected they might have been involved in funding Al-Qaeda.

THE COURT: Okay.

MR. DEARDEN: It's a libel tourism case. They didn't sue in the States. They sued in the U.K.

THE COURT: I see.

DENIS RANCOURT : Mais je le sais pas si c'est la - si c'est la même descriptive que j'aurais donné, mais...

MR. RANCOURT: Well, I don't know if it's the same, the same description that I would have given.

LE TRIBUNAL : En tout cas, je pourrez toujours le regarder, mais...

DENIS RANCOURT : Merci.

LE TRIBUNAL : ...c'est que les conclusions de droit s'appliquent aux faits dans chacun des causes là. C'est pour ça que je voulais savoir,

mais de toute façon, allez-y.

INTERPRETER: Well, I can always look at it.
Thank you. It's that legal conclusions apply to
the fact in each of the case, yes, so go ahead.

DENIS RANCOURT : Mais le, le, le, le point que
je veux faire ici, c'est qu'il dit, il dit la
chose suivante :

INTERPRETER: So, here's the point I want to
make. Here's what he says,

DENIS RANCOURT: "In circum - in such
circumstances..."

DENIS RANCOURT : Et les *circumstances* c'est...

INTERPRETER: And the circumstances are...

DENIS RANCOURT: "...this may constitute - so
where the reputation had suffered no or minimal
actual damage."

DENIS RANCOURT : C'est ça les circonstances
qu'il résume et il dit :

INTERPRETER: And he says...

DENIS RANCOURT: "In such circumstances, the
appropriate remedy for the defendant may well be
to challenge the claimant's resort in English
jurisdiction or to seek to strike out the action
as an abuse of process."

DENIS RANCOURT : Donc, ça serait un abus de
processus quand on peut - quand il n'y aurait pas
comme ça de dommages actuels. Ensuite, en plus,
la Cour d'appel de l'Ontario a dit que la
présomption de dommages peut être - peut être
contrée en argument et avec des faits dans une
cause en diffamation. Donc, je cite les

paragrapes - des morceaux de paragraphes 29 et 47 de Murphy v. Alexander en 2004 et ça dit :

INTERPRETER: So, it would be an abuse of process when there wouldn't be actual damages such as this case. Then, on top of that, the Court of Appeal of Ontario stated that presumption of damages can be countered with arguments and facts in the case with defamation. So, paragraphs 29 and 47, Murphy v. Alexander in 2004, here's what I quote,

DENIS RANCOURT: "The presumption of damages however may be rebutted..." *et puis*, ..."proof of actual damage is not required, on the evidence the presumption of damages was not fully rebutted."

DENIS RANCOURT : Donc, ça admet qu'on peut attaquer cette présomption qu'il y a eu des dommages et voilà. Donc, dans mon cas, ce que j'ai plaidé, on peut trouver - je, je, je reprends ce que j'ai plaidé au paragraphe 8 de mon *factum* où je cite les paragraphes 67 à 71 de mon *Statement of Defence* et là, je dis au, au paragraphe 67 :

INTERPRETER: So, it admits that one can attack this presumption that there were damages involved and there you go. So, in my case, what I pled, one can find I - paragraph 8 of my *factum* where I did plead, I'm - I will quote 67 to 71 paragraphs in my defence. At paragraph 67, here's what I say and I quote...

DENIS RANCOURT: "The instant action is intended

to punish, intimidate and silence the defendant,
a vocal responsible..."

DENIS RANCOURT : Etcétéra. Et je dis dans le -
dans ce même paragraphe...

INTERPRETER: And I state in that same
paragraph...

DENIS RANCOURT: "Regarding such matters as
(indiscernible) and as such is frivolous,
vexatious or an abuse of process."

DENIS RANCOURT : Donc, je suis en train de
plaider que y'a un abus de processus parce que
l'action est menée pour un motif qui n'est pas
correct, c'est-à-dire, pour punir, intimider et
me silencer. Donc, j'ai plaidé abus de processus
pour cette raison-là. C'est dans mon *Statement
of Defence*.

INTERPRETER: So, what I'm trying to plead is
that there's an abuse of process because the
action is conducted for a motive that is
improper, to punish, intimidate and silence me.
So, I pled abuse of process for that reason.
It's in my *Statement of Defence*.

MR. DEARDEN: Where?

DENIS RANCOURT : Et ensuite, je continue au
paragraphe - au prochain paragraphe...

MR. DEARDEN: Where?

DENIS RANCOURT : ...le - au paragraphe 5 - 67,
que je viens de lire.

INTERPRETER: And then I continue paragraph 67,
which I just read.

DENIS RANCOURT : Ensuite, le...

THE COURT: You referred to eight of his factum and which it contains 67 of the Statement of Defence. All right.

DENIS RANCOURT : Et ensuite au paragraphe 68, j'ai plaidé...

INTERPRETER: And then at paragraph 68, I pled,

DENIS RANCOURT: "This - the defendant denies that the plaintiff has suffered any loss or damages for which he is responsible and puts the plaintiff to the strict test therefore."

DENIS RANCOURT : Donc, je questionne les dommages. Ensuite, à 69, je dis...

INTERPRETER: So, I challenge the damages and then at 69...

DENIS RANCOURT: "If the plaintiff has suffered any damages or loss, which is denied, the plaintiff has failed or refused to take proper steps to mitigate the damages or losses."

DENIS RANCOURT : Donc, là encore, je, je nie qu'il y a eu des dommages. Au 70, je dis...

INTERPRETER: So, again, I deny damages. At 70, I say...

DENIS RANCOURT: "The plaintiff's damages as claimed are excessive, exaggerated, too remote and unrecognized at law."

DENIS RANCOURT : Donc, je dis que ce, ce qu'elle a demandé en vue de - des, des, des dommages réels qui a pu avoir, c'est excessif. J'ai plaidé ça en 70. Et en 71, je dis...

INTERPRETER: But what I'm saying is that what she seeks as damages, real damages, that it is

excessive. I pled that in 70 and in paragraph 71...

DENIS RANCOURT: "The plaintiff's damages, as claimed, are against an unemployed individual and would put the defendant out of house and home in a manner where there is no claimed actual damages to the plaintiff. Such asymmetry...

DENIS RANCOURT : Je dis...

INTERPRETER: I claim...

DENIS RANCOURT: "...in attempted extraction of damages is frivolous, vexation or an abuse of process."

DENIS RANCOURT : Là encore, je reviens à ça, *abuse of process and unrecognized at law*. Donc, je suis en train de dire qu'il y a un abus de processus quand on fait un action comme celle-là alors qu'il y a essentiellement pas de dommages et qu'on argumente même pas qu'il y en a eu des dommages et que y'a pas eu aucune évidence de dommages réels à la réputation. C'est ça que j'ai - que, que j'ai plaidé. C'est ça mon, mon plaidoire. Donc, je, je m'attends à, à argumenter ça et en plus, il est clair que c'est - les dommages dont on parle, sont les dommages à la réputation parce que regardez le *Statement of Claim* maintenant. Si je regarde le *Statement of Claim*, les seuls dommages qui sont mentionnés, sont aux paragraphes 40, 44, 49, 54, 57 et 58 et ce sont tous des dommages à la réputation qui sont mentionnés. La seule mention dans le *Statement of Claim* qui est un dommage - qui n'est

pas un dommage, mais la seule mention d'une autre affaire c'est ce que - c'est ce qui est appelé *mental distress* et on parle que y'a eu - que le - que le - l'article *caused mental distress*. C'est même pas dit que c'est un dommage. Donc - et c'est - et c'est comme ça en passant dans le paragraphe 58 du *Statement of Claim*. Ensuite, moi, j'ai fait ma réponse en disant que y'avait pas de dommages réels, comme je viens d'expliquer, et ensuite, il y a eu un autre plaidoirie qui est un *reply*. La plaignante a soumis un *reply* détaillé et là, je suis au paragraphe 9C de mon *factum* et on voit dans ce *reply* qu'il y a aucune mention de problèmes de santé, aucune mention de stress mentale, aucune mention de rien. Donc, dans tout le plaidoirie, c'est mentionné juste une fois puis c'est pas attaché à des dommages et par contre, il y a 18 paragraphes qui parlent des dommages à la réputation sans, sans jamais donner aucun particulier par rapport à ces dommages-là et sans jamais donner - nommer aucun fait qui pourrait démontrer qu'il y a un dommage réel à la réputation et donc, les 18 paragraphes en question sont les paragraphes 9, 12 à 14, 20 à 21, 23, 26 à 28, 30 à 31, 34 à 36, 38 et 40 à 41 et, et là, on argumente ça en réponse.

INTERPRETER: Again, I return to the abuse of process. So, what I'm saying is that there is an abuse of process when one undertakes an action like this one, when there is essentially no

5 damage and we're not arguing that there are
damages and no evidence of damage was made to the
reputation. That's what I pled. That's my
pleading. So, I expect to argument - to argue
that and moreover, it is clear that the damages
spoken of are damages to the reputation because a
look at the Statement of Claim now, if I look at
that, the only damages that are mentioned are at
10 paragraph 40, 44, 49, 58 and 50 [sic] and these
are all reputation damages. The only mention in
the claim that is a - not a damage, and they only
mention of anything else, is what is called
mental distress and that there was - that the
article caused mental distress. It's not even
15 claimed as a damage. And it's like that in 58 of
the claim mentioned in passing. Then I reply
saying that there wasn't any - there weren't any
real damages, as I said, and that then there was
another pleading, a reply. The plaintiff
20 submitted a detailed reply at 9C of my factum and
we see in this reply, that there is no mention of
any health problems, no mental stress, no mention
of anything whatsoever. So, all in the pleading,
it's mentioned once and it's not attached or
25 related to damages but however, there are 18
paragraphs that speak to damage to the reputation
without ever once giving any particulars as to
that damage and without ever naming any fact that
could demonstrate that there has indeed been real
30 damage to the reputation. So, 9, 12 to 14, 21...
INTERPRTER: Mr. Rancourt is going too fast. The

interpreters can't keep up with the numbers,
so....

DENIS RANCOURT : C'est un *reply*. Là, monsieur
Dearden voudrait exclure des paragraphes de mon
Statement of Defence alors qu'il a déjà fait une
réponse détaillée. En plus...

INTERPRETER: And that's being argued in reply.
Mr. Dearden would want to exclude paragraphs of
my claim, of my defence where he's already made
a detailed reply.

MR. DEARDEN: I'm not arguing that at all.

DENIS RANCOURT : En plus.... Monsieur Dearden
est en train de parler et ça me dérange quand il
parle.

INTERPRETER: Mr. Dearden is constantly
interrupting me.

MR. DEARDEN: Well, just to assist, Your Honour,
I'm not arguing that Mr. Rancourt can argue and
even examine Professor St. Lewis that she wasn't
damaged. That's not my point.

THE COURT: No but wait for your reply.

DENIS RANCOURT : Okay, ça, ça - ça, je trouve ça
dérangeant. Je m'excuse là, mais...

INTERPRETER: That, I find it annoying. I'm
sorry.

LE TRIBUNAL : Prenez deux - prenez une minute
là.

THE COURT: Well, take a minute to compose
yourself.

DENIS RANCOURT : Merci. En plus, le principe de
abus de processus est une doctrine très large et

flexible, qui est toujours disponible pour les défendants. Toujours. Et d'ailleurs...

INTERPRETER: Moreover, the principle of abuse of process as a doctrine, very large and flexible, is always available to defendants. Always.

LE TRIBUNAL : J'ai - excusez-moi. J'ai compris inque la moitié de votre phrase. Excusez. Allez-y.

INTERPRETER: I'm sorry. I only understood half your sentence. Go ahead.

DENIS RANCOURT : Okay, je recommence.

LE TRIBUNAL : J'ai pas saisi votre phrase. Ouin, c'est ça.

INTERPRETER: I didn't grasp your sentence.

DENIS RANCOURT : Okay, ma, ma phrase est la suivante.

INTERPRETER: All right. My sentence was the following. Go ahead.

DENIS RANCOURT : C'est que la doctrine de abus de processus, c'est une doctrine large et flexible qui est toujours disponible comme - pour un défendant et en autre, si je reviens à une décision de la *England, England and Wale Court of Appeal*, de 2000 - de l'année 2000, c'est Stocznia v. Latreefers Incorporated. C'est - je suis au paragraphe 10 de mon *factum*. On explique là...

INTERPRETER: The doctrine of abuse of process, it's a large and flexible doctrine that is always available to a defendant, among others. If I return to the English and Wale Court of Appeal decision from 2000, Stocznia v. Latreefers

Incorporated, I'm at paragraph 10 of my factum.
It's explained there...

DENIS RANCOURT: "Abuse of the court's process
can take many forms and may include a combination
of two or more strands of abuse, which might not
individually result in a stay."

DENIS RANCOURT : Parce que ça, c'est important
parce que dans mon *Statement of Defence*, j'ai
argumenté abus sur plus que juste un point et on
peut - il faut les regarder ensemble pour décider
si y'a un abus de processus suffisant pour
annuler l'action, pour - et donc, je reviens à
mon *Statement of Defence* et au paragraphe 63,
j'ai parlé que il était inconsistant avec la
Charte vis-à-vis des droits d'expression si un
gouvernement - là, j'ai parlé du gouvernement,
etcétera, mais je l'ai plaidé ça et puis, j'ai
aussi plaidé au paragraphe 65...

INTERPRETER: Because that's important. In my
Statement of Defence, I argue abuse on more than
one - just one point and you need to look at
those together to determine whether or not there
is an abuse of process that entitles for a stay.
So, returning to my *Statement of Defence* at
paragraph 63, I speak of that it was inconsistent
with the *Charter* as opposed to the rights of
expression. If a government, I spoke of
governments, etcetera, but I pled that and I also
pled at 65, paragraph 65...

DENIS RANCOURT: "In a case such as the instant
one, a balance between an individual's protection

5
against defamation and a free speech criticism,
protected by the *Charter*, a key societal
institution, cannot be achieved if the
individual, the plaintiff benefits from improper
or interested enabling third-party support."

10
DENIS RANCOURT : Donc, j'ai plaidé que - de, de,
de - que cet argent, si elle est impropre ou cet
argent pourrait affecter l'équilibre fondamental
qu'on recherche à déterminer dans cette cause
entre la valeur de l'expression libre et la
protection de la réputation et ça, c'est très
important. Donc, j'ai plaidé toutes ces choses-
là. Donc, pour résumer ce que j'ai plaidé, j'ai
plaidé que l'action est un abus de processus
15 parce qu'il n'y a pas de réels dommages à la
réputation. Là, je résume, Monsieur le juge, les
- mes, mes trois - mes trois choses.

20
INTERPRETER: So, I pled that, that, that money,
if it is improper, that that money could affect
the fundamental equilibrium that is sought in
this matter between the freedom of speech and
protection of reputation and that is very
important. So, I pled all those items, points.
Therefore, to summarize what was pled, I pled
25 that the action is an abuse of process because
there is no real damage to the reputation. I am
summarizing the three points.

LE TRIBUNAL : Mm-hmm.

INTERPRETER: Mm-hmm.

30
DENIS RANCOURT : Et que c'est un abus de
processus parce que ça voulait me punir,

m'intimider, me silencer. Donc, des motifs qui ne sont pas propres à la diffamation, à une cause de diffamation et j'ai plaidé que c'était un abus de processus parce qu'il y a de l'argent, on a appris après, illimité d'une personne qui n'est pas partie à la - à la cause et que ça, cette assimitrie-là peut venir déranger cet équilibre dans une cause comme celle-ci ou d'un côté, il y a de trois à cinq avocats de très grande réputation et de mon côté, je ne peux pas retenir un avocat parce que j'ai pas l'argent de le faire, de cet, cet déséquilibre là, cet équilibre qu'il faut trouver dans une cause en diffamation est endommagé par l'argent qui vient de, de l'extérieur. Ça, ce sont les éléments de mon, mon *Statement of Defence* vis-à-vis de l'abus de processus. Donc, chacun des éléments touche fondamentalement une action en diffamation et cet équilibre qu'il faut trouver entre les deux choses. Il l'affecte. Okay? Mais ce que monsieur Dearden veut faire c'est essentiellement enlever ce que j'ai plaidé et pour ça, il faut regarder la loi sur est-ce qu'on peut enlever comme ça - quels sont - quel est le test pour enlever et, et je regarde maintenant le paragraphe 12 - le 12 de mon, de mon *factum* et je dis au Canada, le test est comme suit et là, je cite Attorney General of Canada v. Inuit Tapirisat, 1980 de la Cour suprême du Canada et ça dit...

INTERPRETER: And that it is an abuse of process

because it seems to punish, intimidate and
silence me, improper motives to a defamation suit
and I pled that it was an abuse of process
because there are monies and we learned
subsequently, unlimited monies to a non-party or
from a non-party and that is dissymmetry can
disrupt the equilibrium, because on one side, you
have two or three lawyers, very learned, and on
my side, I have none and that imbalance that has
to be sought in a defamation suit is damaged.
It's tainted by monies from outside sources.
Those are elements of my defence with regards to
abuse of process. So, each element deals
fundamentally with a defamation issue and the
equilibrium sought between the two and factors
that influence the seeking of this equilibrium
but what Mr. Dearden is seeking to do, he wants
to bar me from what I pled and for that, you need
to look at the law. Can one - what are the tests
to remove or strike? I look at 12 of my factum
now, paragraph 12. In Canada, the test is as
follows, and I quote, it's A.G. v. Inuit
Tapirisat in the court - Supreme Court of Canada.
DENIS RANCOURT: "All the facts pleaded in the
Statement of Claim must be deemed to have been
proven. On a motion such as this, a court
should, of course, dismiss the action or strike
out any claim made by the plaintiff only in plain
and obvious cases where the court is satisfied
that the case is beyond doubt."
DENIS RANCOURT : Donc, ça, c'est le test de la

5 Cour suprême. Ensuite, au prochain paragraphe 13 de mon *factum*, j'explique que ce test à la Cour fédérale a été énoncé et répété plusieurs fois et il, il l'appelle un test et il est dit dans les mots suivants et là, je cite Lassombe v. Suntac (ph), 1998, Cour, cour fédérale.

10 INTERPRETER: So, that's the test set out by the Supreme Court. Then at paragraph 13 of my *factum*, I explain that at the Federal Court level, this test was set out and the re-applied and it's stated as follows and I quote Laisson [sic] v. Suntac, 1998, Federal Court.

15 DENIS RANCOURT: "In conclusion, I would like to reiterate that striking out pleadings is a draconian measure. The defendants may not have a strong case on some of the issues raised by the plaintiffs in their motion. However, the test in my view is stringent."

20 DENIS RANCOURT : Il a appelé ça *the test*.

INTERPRETER: He called it the test.

25 DENIS RANCOURT: "The test in my view is stringent. If there is a scintilla of success in a claim, a court should not strike it down. The case law is clear that it has to be beyond doubt."

30 DENIS RANCOURT : Donc, ça, c'est le test pour ce que monsieur Dearden veut accomplir. Donc, à mon sens, étant donné qu'il y a eu une réponse, un *reply*, étant donné qu'on est à la dernière minute dans l'action, on est au procès, ça serait fondamentalement injuste de commencer à découper

5
mon *Statement of Defence* comme monsieur Dearden
veut faire. Ensuite, je veux parler de la motion
champartie ou c'est cette motion-là où le juge
Smith a énoncé toutes ces décisions et il est
très important de voir que cette motion de
champartie, elle était limitée strictement au
tort et je sais pas comment dire *tort* en
français.

10
INTERPRETER: So, that is the test for what Mr.
Dearden is seeking to accomplish. So, in my
mind, given that there was a reply, given that
here we are at the last minute at trial, it would
be fundamentally unjust [*sic*] to start to strike
out parts of my defence, as Mr. Dearden would
have us do. Then, I wish to address the
15
champerty motion, that motion where Justice Smith
articulated all those decisions, it's very
important that that motion, the champerty motion,
it was limited strictly to torts and I don't know
how to say torts - *délit*, in French.

20
INTERPRÈTE : Délit.

DENIS RANCOURT : Par - les délits. D'accord.
Elle était limitée uniquement aux délits de
maintenance et de champartie, uniquement. Et la
Cour d'appel de l'Ontario est assez claire, même
25
dans son jugement très court sur cette, sur cette
question-là et là, je suis au paragraphe 15 de
mon *factum* où je cite la Cour d'appel de
l'Ontario au paragraphe 1 et en outre, elle
dit...

30
INTERPRETER: It was - be limited to the torts of
maintenance and champerty, solely, and the Appeal

Court of Ontario is quite clear in its brief decision and now at paragraph 15 of my factum, where I quote the Appeal Court at paragraph 1, among others, she - the court states...

DENIS RANCOURT: "We are not persuaded that any of the several grounds he advances has merit. We see no error in law on the part of the motion judge in concluding on the ample evidence before him that the respondent's employer's decision to fund the litigation did not amount to maintenance and champerty."

DENIS RANCOURT : C'était ça la question fondamentale.

INTERPRETER: That was the fundamental issue.

DENIS RANCOURT: "Nor did the respondent's unilateral decision to donate a portion of any punitive damages she might receive to a scholarship at the employer's university make out maintenance or champerty."

DENIS RANCOURT : C'était ça la question en litige devant le juge Smith et qui est allé à la Cour d'appel, uniquement ça. La, la - entre autres, la motion de champartie n'a jamais touché, de façon plus que complètement superficielle, toute la question de la valeur de l'expression libre. Toute la question de la Charte n'a jamais été touchée dans tout ce que monsieur - le juge Smith a fait et ça, c'est important parce que - ça, je vais y arriver, oui, je vais y arriver dans un instant là. Donc, on peut regarder la décision du juge Smith et la

décision de la Cour d'appel et si vous regardez, vous faites une recherche pour les mots, vous allez trouver dans les mots du juge Smith, jamais le mot *Charte*. Jamais. Et dans - et vous allez trouver dans la décision, jamais le mot *value* parce que c'est une valeur dans la Charte, la valeur de l'expression libre. Ça n'existe pas. C'était séparé. Il y a aussi, c'est important de dire qu'il y a pas de chevauchement dans les faits entre ce qui c'est passé dans la motion de champartie et ce que je suis en train de plaider dans ma défense d'abus de processus. Il y a - il y en a plus....

INTERPRETER: That was the issue at - before Justice Smith and that made its way to the Court of Appeal, solely that issue of maintenance and champerty. Among other things, the champerty motion never dealt in - except in passing, the whole question of the value of the freedom of expression. That whole issue of the *Charter* was never raised in what Justice Smith dealt with and that's important because - and I'll get there, because - yes, I'll get there in a moment. So, we can look at Justice Smith's decision and the Court of Appeal decision and if you look and you search those words, you will find in - you'll never find in Justice Smith's decisions the word "*Charter*" and you'll never talk about values, the value in the *Charter*, the value of freedom of expression. Those things are distinct. It's also important to say that there is a no

overlapping in the facts between what happened in the champerty motion and what I am now pleading now is an abuse of process.

MR. DEARDEN: It's an abuse of process motion.

DENIS RANCOURT : Là, monsieur Dearden, il parle à la voix haute et ça me dérange beaucoup. Il, il, il énonce des choses.

INTERPRETER: Now, Mr. Dearden's speaking out loud. It's very disruptive. He's saying things...

MR. DEARDEN: I'm talking to my client, Your Honour.

THE COURT: Sorry, okay.

MR. DEARDEN: I was talking to my client.

THE COURT: Yeah. No, but it was because he heard you, he's saying.

MR. DEARDEON: Well, it could be because I got...

THE COURT: I mean...

LE TRIBUNAL : Ça, c'est la vie. C'est la vie. On peut....

INTERPRETER: Oh, such is life, *monsieur*....

MR. DEARDEN: It may be one of those earphone things, Your Honour. When you hear people on a plane, they're yelling and laughing because they've got it blasting and they don't know how loud they're talking but it certainly wasn't deliberate.

THE COURT: Okay, that's fine, thank you.

DENIS RANCOURT : Okay. Donc, le point je suis en train de faire c'est que il n'y a pas de chevauchement entre les faits parce que dans la

5 motion champartie, les faits - y'a des faits que je voulais admettre. Ils n'ont pas été admis. Tous les faits dans mon - dans mes *affidavits* du 23 avril et du 23 mai, dont le juge Smith parlait, ont été exclus. Ils ont jamais été admis. Ils n'ont pas été considérés et en plus, le juge a trouvé que ils étaient pas pertinents à la motion de champartie. Donc, les faits ne - n'ont pas été utilisés, n'étaient pas pertinents et ont été exclus de la motion de champartie. Donc, y'a aucun chevauchement dans les faits. Et aussi, c'est important de dire que quand le juge Smith dit même si on avait considérer les faits pour le cas de la champartie et j'aurais trouvé telles affaires, telles affaires, quand le juge Smith dit cela, y'a une grosse différence. C'est que le juge Smith se base uniquement sur des *affidavits*. Il ne se base pas sur des témoins qui ont été interrogés en cour. Il n'y a pas eu de procès. Le, le, le juge n'a jamais vu comment les témoins ont répondu, leurs expressions. Rien de ça n'était visible pour le juge Smith. Rien de ça. Alors, il a - donc, y'a aussi une grosse différence entre un *affidavit* qui est questionné en cour et quelque chose qui se fait dans le procès. Donc, la motion champartie et la motion - et, et ma - et mon remède d'abus de processus que je plaide sont très distincts pour les raisons suivantes. Donc, je résume. La motion champartie ne traitait que à savoir si le financement était approprié ou pas en soit et

assez tellement inapproprié, qu'il faut arrêter l'action. C'était ça - c'est ça la maintenance et la champartie. La seule question était, est-ce que le financement en soit est approprié? Et c'est indépendant de toute question de *Charte*, complètement indépendant de toute question de *Charte* et c'est la loi, le *common law* de la maintenance et de la champartie qui est utilisé pour répondre à cette question là. Uniquement, et c'est limité à ces délits. Uniquement. La *Charte* n'intervient pas ou de façon complètement superficielle, si elle est mentionnée. Alors que, ce que je plaide, je plaide un abus de processus large avec différentes branches dans cet arbre d'abus qui vient toucher directement cet équilibre qu'on souhaite trouver entre la valeur de l'expresssion libre, qu'on doit toujours considérer dans une cause de diffamation, comme la Cour suprême a dit, et la protection de la réputation. Donc, le fait que l'université a donné de l'argent à la plaignante, paye entièrement ses frais, bien sûr que c'est un fait commun entre la motion de champartie et le procès, mais ça veut - c'est simplement ça, un fait commun. Ce n'est - ce - les - et la cause elle-même, était distincte. Un, est d'utiliser ce fait-là comme partie de l'abus de processus. Dans la question centrale de diffamation, il faut trouver cet équilibre entre expression libre et protection de la réputation. Donc, dans le procès, c'est ça la question centrale. Dans le

champtartie, la seule question était, est-ce que ce financement est inapproprié en soit parce que le financement lui-même a été fait pour des motifs qui ne sont pas corrects ou parce que y'a une ristoune, si on veut, en langage commun, qui revient à l'université, etcétera. C'était ça la question. Bon. Donc, ils sont distincts et il y en a juste un, la question du procès, qui touche à l'expression libre, pas l'autre. Et en plus, c'est très important, monsieur - monsieur Dearden a parlé de l'application de la *Charte* et j'admets, avec lui, que la question de l'application de la *Charte*, ce n'est que pour le gouvernement, bien entendu, mais quand on applique le droit commun de, de la diffamation, on doit le faire en respectant les principes de la *Charte* et ça, c'est dit à plus qu'une fois - plus qu'une décision dans la Cour suprême, mais ici, au paragraphe 19 de mon *factum*, j'ai cité *Hill*, 1995, au paragraphe 91 où il dit - où c'est dit...

INTERPRETER: All right, so the point that I'm trying to make, Your Honour, is that there is no overlapping in the facts because in the champerty motion, the facts - there were facts that I'm willing to admit were not admitted, all the facts in my affidavit of the 23rd of April and May that Justice Smith spoke of. They were all eliminated. They were not admitted. They were not considered and moreover, the - His Honour found that they were not pertinent to the

champerty motion. Therefore - so, those facts were not used, were not pertinent and were excluded from the champerty motion. So, there's no overlapping on facts and it's also important to note that when Justice Smith says even if we had considered the facts for champerty, I would have concluded this or that. When Justice Smith says that, it's a big difference. Justice Smith is relying solely on affidavits. He's not relying on witnesses that were questioned in court. There was no trial. The judge never saw how witnesses answered, their expression. Nothing was available to Justice Smith. None of it. So again, there's a big difference between an affidavit, which is drafted outside of court and something that would be in a trial proper. So, the champerty motion and my remedy for abuse of process, that I'm pleading, are quite distinct and here are the reasons. Let me summarize. Champerty motion would have dealt only with - to find out if the financing was appropriate or not in itself, and so inappropriate that you'd have to stop the matter. That's the matter of champerty. The question is if the financing itself is appropriate and it's independent of any question touching the *Charter*. Completely independent. It's the law of maintenance and champerty in common law that's used to answer that question solely and it's limited to those torts only. The *Charter* has no bearing here or only in a superficial manner, if it should be mentioned. Now, what I'm pleading, I'm pleading

an abuse of process with wide scope, with different branches in this tree of abuse, if you want, that comes to touch directly this equilibrium that we want to find out between the value of freedom of expression that must always be taken into account in a defamation case, as the Supreme Court said, and the protection of reputation. So, the fact that the university contributed money to the plaintiff, pays completely for her fees, of course it's a common fact between the champerty motion and the pros - and the suit. That's it. And the trial. That's just it. It's a common ground. The case itself was separate, distinct. That is, using that fact in the abuse of process in the whole central question to find that equilibrium between freedom of expression and protection of the reputation. Was this financing appropriate or not or inappropriate? Because the financing itself, was it done for improper - are we talking about kickbacks. So, there's only one - the question of - there's only one that touches here, not the other. Now, also, it's very important, Mr. Dearden talked about applying the *Charter* and I admit with him that the question of applying the *Charter*, it's only for the government, of course, but when one applies common law for defamation, we must do that while respecting the principles of the *Charter* and that is said, more than once, from the Supreme Court decisions but paragraph 19 of my factum, I quoted *Hill* in '95, paragraph 91,

where he says, where it said...

DENIS RANCOURT: "The common law must be interpreted in a manner, which is consistent with *Charter* principles."

DENIS RANCOURT : Et ça, c'est indépendant si c'est le gouvernement ou pas. Ça, c'est toujours et c'était dans le contexte d'une cause en diffamation justement. Okay? Donc...

INTERPRETER: And that is independent of whether it's a - whether it's a government or not. It's always like that. And it was in the context of a defamation case. Okay?

LE TRIBUNAL : Mais c'est quoi le contexte de cette phrase-là? En tout cas, j'irez la voir, en tout cas.

INTERPRETER: So, what's the context of that sentence? Oh, well, never mind, I'll go and see it.

DENIS RANCOURT : Le...

LE TRIBUNAL : C'est parce que c'est une...

DENIS RANCOURT : Ah, oui, bien dans...

LE TRIBUNAL : C'est une...

DENIS RANCOURT : ...le contexte de cette phrase-là...

INTERPRETER: Well, yes, well, the context of that sentence...

LE TRIBUNAL : C'est une...

DENIS RANCOURT : ...ça, je m'en souviens.

INTERPRETER: Yes, I do recall.

LE TRIBUNAL : C'est une...

DENIS RANCOURT : Ça, je m'en souviens.

INTERPRETER: Yes, I do recall.

LE TRIBUNAL : C'est une phrase...

INTERPRETER: But it's just a sentence.

DENIS RANCOURT : Oui, ça, je m'en souviens.

INTERPRETER: Yes, I do recall.

LE TRIBUNAL : ...sur un jugement de - je sais pas, de 30 pages, 50 pages. Je le sais pas. La Cour suprême a tendance à être - à écrire de longs jugements.

INTERPRETER: You know for a decision for I don't know, 30, 50 pages. I don't know. The Supreme Court has tendency of writing on and on when there's decisions.

DENIS RANCOURT : Oui, on peut - en faite, on a les - on a les autorités de monsieur Dearden et *Hill* est là-dedans...

INTERPRETER: Well, we do have in Mr. Dearden's case....

LE TRIBUNAL : Okay.

DENIS RANCOURT : ...et vous pouvez voir exactement...

LE TRIBUNAL : Puis là, ça, c'est au paragraphe 91.

INTERPRETER: 91? Paragraph 91?

DENIS RANCOURT : Quatre-vingt-onze de *Hill* et donc, je vais chercher l'onglet pour *Hill*. C'est l'onglet 13.

INTERPRETER: Yes, let me look at the tabs. It's Tab 13 for *Hill*.

MR. DEARDEN: Where are we?

LE TRIBUNAL : Okay.

INTERPRETER: Okay.

DENIS RANCOURT : Et si il a inclu toute - ah, il a pas inclu ces, ces pages-là, je pense. Non. Il n'a pas...

INTERPRETER: And here, included oh, he didn't include those pages, I think. No. No, he didn't include those pages.

LE TRIBUNAL : Okay, bien, je le trouve...

DENIS RANCOURT : ...inclus ces pages-là, mais...

LE TRIBUNAL : Je le trouve...

DENIS RANCOURT : ...je, je...

LE TRIBUNAL : Je le trouverai moi-même.

DENIS RANCOURT : ...je le connais de mémoire, Monsieur le juge. C'était la conclusion. Je peux vous le résumer puis vous pouvez aussi le regarder.

INTERPRETER: But I do recall it just from memory. It was a conclusion. I can summarize it for you and you can also check it out.

LE TRIBUNAL : Juste une seconde.

INTERPRETER: Well, just a sec here.

DENIS RANCOURT : C'est très important parce que c'est cité très, très souvent ce paragraphe-là par rapport à cette question-là.

INTERPRETER: It's very important because that paragraph comes up quite often regarding that question.

LE TRIBUNAL : Ou, oui, j'ai vu ça. C'est répété souvent. Je.... C'est pour ça que...

INTERPRETER: Yes, yes, I saw that. It comes up often.

DENIS RANCOURT : Non, non, je veux dire le paragraphe 91 là, par rapport à cette question.

INTERPRETER: Paragraph 91, you know, regarding...

LE TRIBUNAL : Oui, oui, c'est ça je dis. C'est répété souvent ça, mais...

THE COURT: Yes, that's what I'm saying. It's often brought up.

DENIS RANCOURT : Et, et, et, et je me souviens exactement du contexte. C'était toute la question, qu'est-ce qu'on fait quand on parle - quand, quand y'a une question de liberté d'expression, mais que c'est pas nécessairement le gouvernement et ils ont revu toute la loi et à la fin, dans le paragraphe de conclusion, il y a cette phrase qui dit...

INTERPRETER: Yes, I do recall the context. It was a whole question of what does one do when there's a question of freedom of expression but it's not necessarily a case involving the government. They went over the whole case law and at the end, at the - they went over the law, at the end, they say...

DENIS RANCOURT: "The common law must be interpreted in a manner, which is consistent with *Charter* principles...

DENIS RANCOURT : Ou il distingue *Charter values*, qui est un, un droit absolu et *Charter principles*, qui veut juste dire il faut qu'on soit consistant avec l'esprit de la *Charte* et c'est ça la conclusion de toute cette, cette

étude-là et donc, ça, c'est très important parce que monsieur Dearden voulait nous faire croire que, que y'a, y'a juste une façon que la *Charte* peut intervenir et c'est, c'est le gouvernement, mais pas du tout. Le *common law* et en particulier, le *common law* de la diffamation, doit être interprété de façon consistante avec les principes de la *Charte* et c'est pour ça que y'a toujours, dans une cause en diffamation, à chercher et à trouver l'équilibre entre cette valeur ou ce principe d'expression libre et la protection de la réputation. Et j'ai donné aussi la loi pour le test pour *res judicata*. Si on veut que ça soit *res judicata*, j'ai parlé de, de la Cour suprême, Danyluk v. Ainsworth, 2001, la Cour suprême et là, je cite le paragraphe que le test est en deux étapes. Ça dit...

INTERPRETER: Or where they distinguish *Charter* values, which is an absolute right and *Charter* principles, which just means it must be consistent with the *Charter's* spirit. And that's the conclusion of that whole study. So, that's very important because Mr. Dearden wanted us to believe that there's only one way that the *Charter* can intervene and it's through the government, but not at all. Common law, in particular common law where defamation, must be interpreted in a consistent fashion using the principles of the *Charter* and that's why, in a defamation case, there's always the fact that one must look for the equilibrium and to find the

equilibrium between this value, this principle of freedom of expression and reputation protection. And I also supplied the law for the *res judicata*. If we wanted to be *res judicata*, I talked about the Supreme Court, Danyluk v. Ainsworth, 2001, Supreme Court, and here is paragraph I'm quoting, two branch test...

DENIS RANCOURT: "The first step is to determine..."

DENIS RANCOURT : Et donc ça, c'est le paragraphe 33 de cette décision.

INTERPRETER: And so that is paragraph 33 of this ruling.

DENIS RANCOURT: "The first step is to determine whether the moving party has established the preconditions to the operation of issue estoppel set out by Dixon, J, in *Angle*. If successful, the court must still determine whether, as a matter of discretion, issue estoppel ought to be applied." Okay?

DENIS RANCOURT : Donc, y'a deux étapes et *Angle*, et je le cite au prochain paragraphe de mon *factum*, paragraphe 21 où *Angle* et c'est très intéressant parce que là, j'ai cité trois de ces paragraphes aux pages 254 à, à 255. Un...

INTERPRETER: So, there are two steps in *Angle*. I do quote that in paragraph 21, the next one. And it's very import - interesting, I quoted three of his paragraphs from pages 2-54 to 2-55, pages. One...

DENIS RANCOURT: "The same question has been

decided."

DENIS RANCOURT : Alors, j'ai déjà dit c'est pas du tout la même question. Maintenant, c'est champartie, délit versus une question front - une question de liberté d'expression dans une cause en diffamation. C'est pas la même question.

Deux...

INTERPRETER: So, I already said it's not at all the same question. Now, maintenance and champerty versus question of freedom of expression in defamation cases. It's not the same question. Number two...

DENIS RANCOURT: "The judicial decision, which is set to create the estoppel was final."

DENIS RANCOURT : Mais si c'était pas la même question, deux, n'est pas pertinent et trois...

INTERPRETER: But if it wasn't the same question, two would not be relevant. And three...

DENIS RANCOURT: "That the parties to the judicial decision of their privies were the same persons as the parties to the proceedings in which the estoppel is raised."

DENIS RANCOURT : C'était pas le cas. Les parties dans la motion champartie, y'en avait trois. L'université était inclus parce qu'on attaquait ses motifs pour donner l'argent. Donc, juste le fait que c'est même pas les mêmes parties, ça montre la distinction entre les deux choses. Et ce *Angle* continue en expliquant la chose suivante. Il dit...

INTERPRETER: It was not the case. Parties in

the champerty motion, there were three. The university's included. Why? Because we were attacking its motivation for giving the money, so just the fact that it's not even the same parties, it shows you the distinction between the two things. And this *Angle* continues by explaining what follows. He says, or it says...

DENIS RANCOURT: "It will not suffice if the questions arose collaterally or incidentally in the earlier proceedings or is one which must be inferred by argument from the judgment. The question ought - out of which the estoppel is set to arise must have been fundamental to the decision arrived at in the early proceedings."

DENIS RANCOURT: Et un peu plus bas, il dit...

INTERPRETER: And a bit further down, it said...

DENIS RANCOURT: "Whether the determination on which it is sought to fund the estoppel is so fundamental to the substantive decision that the later cannot - that the latter cannot stand without the former. Nothing less will do."

DENIS RANCOURT : Et ça, dans ce cas-ci, il faut mettre en opposition - il faut, il faut bien comprendre que la décision de maintenance et de champartie tient de façon indépendante à savoir si la *Charte* est impliquée ou pas. Donc, la question de la *Charte* n'était pas impliquée du tout dans la motion champartie parce que on pouvait déterminer maintenance et champartie sans même y en parler et d'ailleurs, les juges en ont pas parlé de la *Charte*. Donc, je pense que ce

5 test n'est pas satisfait du tout dans ce cas-ci.
Et là, je veux continuer en passant au prochain
document parce que là, j'ai fais des arguments
additionnels et très importants. J'aimerais
passer à mon prochain document quand vous allez
être prêt, Monsieur le juge. Ça s'appelle
Defendant's Compendium of Argument in Response,
voir dire on proxy defence et c'est un document
de sept pages et il y a deux attachements, mais
10 y'a, y'a pas d'onglets malheureusement parce que
j'ai broché ça ensemble à la dernière minute.
Donc, la section un, est-ce que vous avez ce
document, Monsieur le juge?

15 INTERPRETER: And that, in this case, one must
compare, you must understand the decision of
maintenance and champerty holds an independent
way to whether the *Charter* is involved or not.
So, the question of the *Charter* was not involved
at all in the champerty motion. Why? Because
20 one could determine this - that it was champerty
without even talking about it. That is, the
judge didn't even talk about the - the judges
didn't even talk about the *Charter*. So, I don't
think this test has been proven or satisfied in
any way. And now, I would like to continue by
going to the next document, because I've brought
additional and very important arguments. I would
like to go to the next one. Very important.
25 "Defendant's Compendium Of Arguments In Response,
Proxy Defence", a seven page document. There are
two attachments. There's no tabs. Sorry, I just
30

put that together at the last minute. I stapled that together at the last minute. So, Section 1, do you have that document, Your Honour?

LE TRIBUNAL : Oui.

INTERPRETER: Yes.

DENIS RANCOURT : Merci.

INTERPRETER: Thank you.

LE TRIBUNAL : Oui, oui, je l'ai ici, merci.

INTERPRETER: Well, thank you.

DENIS RANCOURT : Excusez-moi parce que je vois pas très bien à distance là. Moi - la - le premier point c'est que j'admets, pour les besoins de cette question qui est devant nous, que l'université n'est pas *a government entity* et qu'elle n'était pas en train de *implementing a government policy or program*, mais cela est complètement secondaire parce que moi, je me - je, je m'appuie sur ce principe de la Cour suprême qui dit que *the common law must be interpreted in a manner which is consistent with Charter principles* plutôt que un application en loi de la Charte pour ce qui concerne la liberté d'expression. C'est la-dessus que je m'appuie. Et donc, les sections 2 et 3, les pages 3 à 13 du *factum* de, de, de, de monsieur Dearden n'était pas nécessaire parce que je l'admets. Je, je ne comprends pas pourquoi il a voulu faire tout cet argument. Ensuite....

INTERPRETER: Sorry, 'cause I can't see very well from afar. So, the first point is that I admit, for the purposes of this question with us, that the university's not a government entity, that it

wasn't in the process of implementing but that's quite secondary. Why? Because I base myself on this principle of the Supreme Court that says the common law must be interpreted in English, rather than a find - an application at law of the *Charter* regarding freedom of expression. That's what I'm basing myself on. So, sections 2 and 3, pages 3 of - to 13 of the factum, from Mr.

Dearden's factum, were not necessary because I admit it. I don't understand why he wanted to bring about all this argument. Then...

LE TRIBUNAL : Oui, ça, vous l'avez déjà plaidé.

INTERPRETER: You've already pled that.

DENIS RANCOURT : Oui, ça, je l'ai déjà dit. La section 3, je dis que - j'argumente que la plaignante a accepté de se soumettre à un certain chevauchement de l'évidence parce qu'elle n'a pas fait de motion pour enlever mes plaidoiries. En anglais, je dis...

INTERPRETER: Yes, I've already pled that. So, section 3 then, I say that, I argue that the plaintiff accepted to agree to a certain overlapping of the evidence. So, she didn't bring an action to strike my pleadings.

DENIS RANCOURT: "By not seeking to strike the pleadings, the plaintiff has agreed to subject herself to possible evidentiary overlap."

DENIS RANCOURT : Et là, au paragraphe 10 de ce document, je dis que la défendante n'a pas fait de motion *to strike*. Elle a fait une réponse en *reply*. Elle a poursuivi les découvertes pendant 16 heures de découverte. Elle a fait tout ça.

Elle a avancé dans l'action et jamais, elle a parlé d'éliminer des paragraphes dans mon *Statement of Defence* jusqu'au moment où on arrive au procès. Donc, par sa décision et elle a soumis - elle a soumis le *trial book*. Elle a soumis les plaidoiries sans les critiquer. C'est ce qui est devant nous. C'est ce qui est devant la Cour et maintenant, elle voudrait enlever plein de paragraphes de là. Ensuite, prochainement, j'argumente que les circonstances dans l'autorité que monsieur Dearden a beaucoup citée, qui est Hill v. Church of Scientology, la Cour suprême, sont trop différents, trop distincts pour être d'utilité parce que c'est un cas très différent du cas qui est devant nous. Premièrement, dans *Hill*, et là, je, je, je fais le paragraphe 11 de ce document. Dans *Hill*, la seule évidence qu'il y avait un motif impropre, c'était le fait que le parti, le gouvernement, payait le, la plaignante, mais c'était la seule évidence et c'est dit très explicitement dans *Hill* et dans *Hill*, la seule évidence que c'était un *lawsuit by proxy or a straw man lawsuit* ou ce que vous voulez là, un abus de processus où c'est un autre parti qui encourage la, la, la plaignante à se plaindre. La seule évidence c'était encore juste le fait que c'était un employé et qu'on payait pour son procès et dans *Hill*...

INTERPRETER: Then, paragraph 10 of that document, I say that the defendant did not bring

about a motion to strike. She provided a response in reply. She went through 16 hours of examination. She did ahead of the whole case. She never talked about eliminating stay - stating any - striking any paragraph in Statement of Defence, not until we get to the trial. So, through her decision and she submitted the trial book, the pleadings, without criticizing them. This is what we have here. This is what we're dealing with here and she would now like to strike a whole gamut of paragraphs from there. Then I argument - I argue that the circumstances in the case, Hill v. Church of Scientology for Supreme, are too different, too distinct to be of use. Why? Because it's a very different case than the one that is at hand. First of all, in *Hill*, I'm looking at paragraph 11 of that document. The only evidence in *Hill* that there was improper ground was the fact that the party, the government was paying the plaintiff. That was the only evidence and it explicitly said so in *Hill*. And in *Hill*, the only evidence, strong in lawsuit or lawsuit by proxy, an abuse of process, where another party encourages the plaintiff to bring about their complaint, the only proof was that, or evidence, was that, again, just the fact that it was an employee and that we were paying the trial. That employee's trial was being paid for in that *Hill*...

LE TRIBUNAL : Alors que - mais quand vous faites une distinction entre une cause puis une autre là...

INTERPRETER: But when you're distinguishing between one case and another...

DENIS RANCOURT : Oui.

INTERPRETER: Yes.

LE TRIBUNAL : ...il faudrait que vous faisiez l'inverse. Ça veut dire dans *Hill*, y'avait seulement ça alors que dans celle-ci, qu'est-ce qu'il y a ?

INTERPRETER: You'd have to do the inverse. You say in *Hill* there was this but what is in here?

DENIS RANCOURT : Oui, donc, y'a plein d'évidence que je veux amener et qui...

INTERPRETER: Yes, there's a whole gamut of evidence that I want to bring up.

LE TRIBUNAL : Non, non, il faudrait...

DENIS RANCOURT : ...et, et...

LE TRIBUNAL : ...que vous disiez...

DENIS RANCOURT : Mais là, je le croyais...

LE TRIBUNAL : ...très sommairement pourquoi.

DENIS RANCOURT : Très sommairement.

LE TRIBUNAL : Non, non, mais je veux dire si vous voulez distinguer une cause, je veux dire cette...

DENIS RANCOURT : Oui.

LE TRIBUNAL : ...cause est pas comme la nôtre.

DENIS RANCOURT : Oui.

LE TRIBUNAL : Il faudrait quasiment que j'ai...

DENIS RANCOURT : Par exemple...

LE TRIBUNAL : ...que j'ai une idée qu'est-ce que vous voulez dire là.

INTERPRETER: Well, you'd have to say it very, in

very general line, say it. If you want to distinguish this case from this one, if you're saying that this case is not like ours, I'd have to have an idea of what you mean.

DENIS RANCOURT : Okay. Bien, par exemple, y'a - là, je le fais de mémoire. C'est pas peut-être pas les mots exacts, mais y'a un courriel de la plaignante à Allan Rock où elle dit essentiellement : « Écoutez, cette affaire, moi, je prévois pas répondre. » Elle, elle vient d'apprendre que y'a eu ce blogue et elle dit à monsieur Rock : « Écoutez, moi, j'ai, j'ai pas l'intention de faire quelque chose avec ça. » Mais - et je pense les mots anglais sont *I would be happy to fit into whatever plans you have*.

INTERPRETER: Okay, so for example, I'm just doing this from memory now. Maybe there's not the exact words, an email from the plaintiff to Allan Rock where she essentially says, "Look at this thing. I don't foresee responding." She just found out about the blog. She says to Mr. Rock, "I have no intention of doing whatsoever with this", but I think, in English, I would be happy to fit into whatever plans you have.

LE TRIBUNAL : Okay, c'est tu plaidé ça en quelque part?

INTERPRETER: Is that claimed somewhere?

DENIS RANCOURT : Oui, c'est plaidé.

INTERPRETER: Yes, it is.

LE TRIBUNAL : Dans votre...

DENIS RANCOURT : Non, non, non.

INTERPRETER: No, no, no.

LE TRIBUNAL : Dans votre *Statement of defence*?

DENIS RANCOURT : Ça, c'est une évidence précise qui n'est...

INTERPRETER: This is precise evidence.

LE TRIBUNAL : Y'a tu des allégations à cet effet là dans votre défense?

INTERPRETER: Is there any allegations that in your document?

DENIS RANCOURT : Je pouvais pas le savoir.

C'est sorti en découverte, Monsieur le juge.

Mais la - c'est plaidé que c'est un abus. C'est plaidé que y'a des mauvais motifs, mais c'est des choses que j'ai découvert - les, les évidences

que je veux amener, je les ai découverts en découverte et je les ai découverts aussi dans une autre cause où des choses ont été rendues publiques pendant, pendant que - après que

l'action soit initiée et ils étaient dans les *affidavits* que j'ai mis dans la motion

champartie. Donc, la plaignante est parfaitement au courant de beaucoup de ces choses-là. Okay?

Donc, dans *Hill*, y'avait que cette évidence là.

Dans mon cas, y'a, y'a, y'a plein d'évidence, à mon sens. Je vous ai donné juste un avant goût.

Dans, dans *Hill*, la, le, le parti qui donnait

l'argent était le gouvernement. Ici, c'est une

université que j'admets n'est pas le gouvernement et donc, je - ça, c'est important parce que vous voyez, dans *Hill*, d'abord dans *Hill*, on ne

plaidait même pas *fair comment*. C'est - y'avait pas de *fair comment*. C'était comme...

INTERPRETER: Well, it came out in examination. It's pled that it's an abuse that there are wrong - faulty grounds and the evidence that I'll bring, I found that at examination. I also found them in other case where things were made public during - after we started with going ahead with this case and they were in the affidavit that they were - that I put in the champerty motion so the plaintiff is quite, perfectly aware of these things. Okay? So, in *Hill*, there's only that evidence. In my case, there's a whole gamut of evidence, in my way of seeing things. I just gave you a foretaste of it. Just a bit. In *Hill*, the party giving the money was the government. Here, it's a university, which I admit is not the government. So, that's important. You know, you see in *Hill*, first of all, in *Hill*, we weren't even pleading fair comment. There were - there was nothing but fair comment.

LE TRIBUNAL : Oui, mais *fair comment* est toujours là là. C'est parce qu'on enlèverait...

DENIS RANCOURT : Non, non, non, mais...

LE TRIBUNAL : ...votre *fair comment* est toujours là.

INTERPRETER: Fair comment is always there. It's not because we're...

DENIS RANCOURT : ...laissez-moi finir ma pensée. C'est parce que quand...

LE TRIBUNAL : Okay.

DENIS RANCOURT : ...*fair comment* est plaidé, la

question de l'équilibre entre, entre liberté d'expression et protection de la réputation est, est vraiment active quand *fair comment* est plaidé. Alors que quand c'est autre chose, comme, par exemple, *qualified privilege*, c'est plus la, le, le *common law* par rapport à *qualified privilege* qui s'applique plus. Vous voyez? Et donc, dans *Hill*, c'était uniquement *qualified privilege* et dans *Hill*, ce n'était pas une opinion qui a été exprimée. C'était un énoncé de faits. On a dit cet avocat a été malhonnête et on l'a dit publiquement sur, sur...

INTERPRETER: No, let me finish my thought. Because the fair comment is pled, the question of equilibrium between freedom of expression and protection of reputation, it's quite active. It's right up there when you plead their comment. When it's something else, like qualified privilege, it's more so common law regarding qualified privilege that comes into light here, that applies. You see in *Hill*, it was only qualified privilege and in *Hill*, it wasn't an opinion that was expressed. It was a statement of fact. It was said this lawyer was dishonest and it was said publicly on...

LE TRIBUNAL : Ouin, mais ça, c'est les questions de - à déterminer. C'est une opinion, une question - comprenez-vous?

DENIS RANCOURT : Oui, mais c'est...

LE TRIBUNAL : Mais de toute façon...

DENIS RANCOURT : Oui.

INTERPRETER: But these are questions to be determined as to it's an opinion or not. Or in any case....

5 LE TRIBUNAL : ...continuons à d'autre chose, oui.

STÉNOGRAPHE JUDICIAIRE : Monsieur...

DENIS RANCOURT : Okay.

STÉNOGRAPHE JUDICIAIRE : Monsieur Rancourt? Monsieur Rancourt?

10 DENIS RANCOURT : Oui?

STÉNOGRAPHE JUDICIAIRE : Vous frappez les - le micro avec vos papiers...

DENIS RANCOURT : Ah, excusez-moi.

STÉNOGRAPHE JUDICIAIRE : ...puis...

15 LE TRIBUNAL : Si vous frappez le micro...

STÉNOGRAPHE JUDICIAIRE : Merci.

LE TRIBUNAL : ...on va...

DENIS RANCOURT : Oui.

20 LE TRIBUNAL : Écoutez, on va être obligé de prendre une pause ici là. On va prendre une pause de 15 minutes.

INTERPRETER: Please don't hit the microphones. Yes, if you hit the microphone - look it, we're gonna have to take a break here, okay? Let's take 15 minutes. Okay?

R E C E S S

30 U P O N R E S U M I N G:

LE TRIBUNAL : Très bien, continuons, monsieur Rancourt.

INTERPRETER: Okay, so let's keep going, Mr. Rancourt.

DENIS RANCOURT : Merci, Monsieur le juge.
Alors, j'arrive à la fin et c'est vraiment les points - des points importants là que, que je n'ai pas encore fait. Alors, je continue.
Alors, je reprends - je continue dans mon *Defendant's Compendium of Argument in Response*, voir dire on proxy defence et je - j'étais au paragraphe 11 de ce document et j'étais en train de - d'expliquer les différences qui avaient - qui avaient avec le, le jugement *Hill* de la Cour suprême qui fait que c'est vraiment très différent de, de mon cas et la - l'aspect que je, je, je n'ai pas mentionné, c'était que dans *Hill*, et ça, c'est le point D, paragraphe 11. La, le seul abus de processus qui est traité dans *Hill*, c'est cette idée d'un *strawman lawsuit by the government*. Et c'était supporté cet argument-là ou cette défense-là, si on veut, uniquement par le fait que le gouvernement payait la plaignante ses coûts. Donc, ça, c'était le, le seul type d'abus de processus qui était là et ce que la Cour a trouvé, c'est qu'il avait pas les évidences pour conclure que cette défense-là pouvait être maintenue avec les évidences. Elle n'a pas - la Cour n'a pas trouvé que cette défense ne pouvait jamais avoir lieu. La Cour a trouvé que y'avait pas les évidences pour la soutenir dans cette cause-là. Ça, c'est important parce que monsieur Dearden fait sonner

ça comme si y'avait eu une détermination que quand il y a un *strawman* ou un abus quelconque de ce type-là, que jamais on peut soulever ça dans une cause de diffamation. Pas du tout. C'est un type d'abus de processus. Y'a plusieurs types d'abus de processus et on a toujours accès aux abus de processus pour remède dans une cause quelconque, incluant dans une cause en diffamation où il y a un, un, un droit commun qui a déterminé des défenses, mais ça veut pas dire qu'on est limité à ces défenses-là et avant de continuer, Monsieur le juge, je me suis rappelé le coin - la, la question centrale dans *Jameel*. Vous savez cette décision de la, la *English and Wales Court of Appeal* dont j'ai parlé, et bien le point central était le suivant : les, le, le défendant a argumenté que dans le cas qui était devant la Cour, la présomption dans le *common law* qu'il y a des dommages à la réputation était contre la *Charte* des droits européens, qui est l'équivalent de la *Charte* des droits canadiens et, et a argumenté que c'est - que cette présomption dans le *common law* dans, dans la défense, allait contre cette *Charte* là et la Cour a décidé que s'il y avait un problème de ce type-là, le remède n'était pas de changer le droit commun, mais c'était de demander - de dire que c'était un abus de processus dans un cas comme celui-là, où il y avait très peu ou pas de dommages réels, actuels, des vrais dommages à la réputation, qui n'avaient pas été démontrés.

5 Dans un cas comme celui-là, le remède est un abus de processus, qu'ils ont dit qu'on pouvait essayer de faire ça plutôt que d'essayer de changer la *Charte* dans ce cas précis où y'aurait eu un conflit avec la *Charte* des droits européens. C'est - c'était ça le contexte central de *Jameel*.

10 INTERPRETER: Thank you, Your Honour. So, I'm almost at the end now and these are really important points that I haven't made yet, so I will continue. So, let me go back and continue, "Defendant's Compendium of Arguments in Response, Proxy Defence", I was at paragraph 11 of that document and I was in the process of explaining
15 the differences that existed with the *Hill* Supreme Court decision, which makes it very different from my case and there, the aspect that I didn't mention was that in *Hill*, and that's point D in paragraph 11, the only abuse of
20 process that is dealt with in *Hill* is that idea of strong [*sic*] lawsuit by the government. And that argument was supported - that argument or that defence uniquely by the fact that the government was paying the costs of the plaintiff.
25 So, that was the only type of abuse of process that was there. What the Court found was that there was no - the evidence wasn't there to conclude that this could be included with the evidence. The Court didn't say that this defence
30 couldn't have taken place, but only that there wasn't sufficient evidence to the proof. That's

important because Mr. Dearden says that there would have been a determination that there was an abuse of strawman of that type, that never can you link that with a defamation case. It's a type of abuse of process. There are different types and we always have access to abuse of process as remedy for a case whatever, including a defamation libel case where there's a common right, where you're - it doesn't mean you're limited to that defence. So, before I continue, I just recall the *Jameel* question, you know, the main topic. You know the English and Wales Court of Appeal that I talked about, well, the central gist of it was as follows: the defendant argued that - or argued that in the case in court, the presumption in common law that there was damage to the reputation was against the European Charter of Rights, which is equivalent of the *Canadian Charter of Rights* and they argued that this presumption in the defence was going against that *Charter* and the Court decided that if there was that type of a problem, the remedy was not to change the common right but to say that it was an abuse of process. In a case like that where there was very little or minimal or no damage, actual damage to the reputation that had not been shown in that case, the remedy is an abuse of process that they said we could try and do that instead of trying to change the *Charter* in this precise case when there would have been a conflict with the European Charter of Rights.

That was the main gist of the *Jameel* case.

LE TRIBUNAL : Merci.

INTERPRETER: Thank you.

DENIS RANCOURT : Okay? Et puis là, je continue.

Je suis maintenant au paragraphe 13 de ce document, « *Compendium of Argument in Response*. »

Et il y a d'autres différences importantes avec *Hill* et le cas qui est présentement devant nous.

Hill, dans ce cas-là, il n'argumente pas qu'il y

a un abus de processus dû au fait que y'a très peu ou pas de dommages comme je fais. Donc,

l'argument est différent. Il n'argumente pas que le, le financement du procès était un abus parce

que c'était essayer de silencer un critique et de l'intimider, comme je fais. C'était pas un cas

comme ça. C'était pas ce type d'abus de

processus là. Et dans *Hill*, *Hill* n'a jamais argumenté que y'avait un abus de processus parce

que le financement déséquilibrait l'équilibre

entre la valeur de l'expression libre et la

protection de la réputation. C'était pas ça son argument. L'argumentait [sic] de *Hill* -

l'argument de *Hill*, c'était que c'était le

gouvernement. Donc, on a pas besoin de parler

d'équilibre. C'est bloqué par la *Charte*, un

point, c'est tout. Donc, c'était un argument de statut qu'il a fait *Hill* alors que moi, je fais

un argument par rapport aux principes de la

Charte et il faut trouver cet équilibre dans une

cause en diffamation en suivant ces principes,

ces valeurs de la *Charte*. Donc, y'a une

différence là aussi avec *Hill*. Comme j'ai déjà mentionné, *Hill* n'a pas fait la défense de *fair comment* ou cet équilibre est particulièrement important parce que *fair comment* est une défense qui est conçue pour défendre l'expression libre dans des - dans des sujets d'intérêt public. Donc, c'est vraiment là que c'est important de trouver cet équilibre et puis, finalement, dans *Hill*, ça ne consiste pas dans un cas où celui qui paye le plaignant est aussi sévèrement critiqué par les mots dont on se plaint. En autre mot, y'a eu une critique que à l'égard du, du - que envers le plaignant, y'a pas eu une critique de gouvernement comme tel alors que dans mon cas, les articles dont on se plaint, critiquaient, à la fois, sévèrement et Allan Rock et l'Université d'Ottawa et la plaignante. Donc, c'était - y'a, y'a, y'a plus un lien là vis-à-vis de l'abus. Donc, ça, ce sont des différences importantes entre *Hill* et le cas qui est devant nous. Et finalement, je veux parler d'une section avant de conclure, qui est une section dans laquelle je veux dire que les décisions de juge Smith dans la cause champartie ne sont pas pertinentes à la question devant nous. Absolument pas pertinente et je vais expliquer pourquoi et là donc, je vais au paragraphe 15 de mon document *Compendium of Argument in Response*, et j'explique sur plusieurs points et j'en ai ajouté depuis, pourquoi cette décision du juge Smith n'est pas pertinente. Et donc, je cite au paragraphe 15 à la page 6 de ce

document. Alors, premièrement, je ne cherche pas à refaire la cause - *re-litigate* parce que la maintenance et la champartie, c'est réglé. La maintenance et la champartie, c'était pour établir à savoir si l'argent était propre ou impropre. Un point, c'est tout. Cette question est déterminée. C'est allé jusqu'à la Cour suprême. Y'a plus de possibilité de refaire cette cause-là, absolument plus et je n'aurais jamais l'intention d'essayer quelque chose qui serait pas raisonnable comme ça parce que c'est réglé. Je ne peux même pas essayer de faire une application quand la cause va être finie et que je vais vouloir dire, oui, mais là, c'est pas correct que je paie les, les frais parce que c'était payé par l'université. C'est fini. Toute la question de maintenant et de champartie, elle est bouclée. Donc, il - c'est impossible de dire que je veux *re-litigate* cette question-là. Ensuite, il y a aucun chevauchement dans l'évidence entre la cause en champartie et la cause qui est devant nous par - donc, donc - parce que l'évidence, qui préoccupe monsieur Dearden, avait été exclue entièrement et on, on a trouvé qu'elle était pas pertinente à la question de maintenance et champartie, mais certaines parties de cette même évidence est très pertinente à ce que moi j'ai plaidé. Très pertinente. Donc, c'est pas parce que elle n'était pas pertinente cette évidence-là dans la cause champartie, qu'elle n'est pas pertinente

quand on parle d'une question de liberté d'expression dans une cause en diffamation. C'est complètement différent. C'est pour ça que ce n'est pas pertinent là, les décisions du juge Smith. Aussi, le délit, maintenant, c'est champartie. Ces délits-là sont distincts de ce que j'essaye de faire parce que ce que j'essaye de faire, c'est un abus de processus centré sur la valeur d'expression libre. Complètement différent. La Charte n'intervient absolument pas et d'aucune façon en maintenance et champartie, sauf peut-être de façon superficielle. Et puis, en plus, les évidences que je veux amener dans ce procès sont plus que les évidences qui avaient été exclues dans la motion de champartie. Y'a pas que ces évidences-là que je veux amener. Y'a d'autres évidences additionnelles, qui n'étaient pas mis de l'avant dans la motion de champartie, mais qui viennent appuyer mon remède d'abus de processus et qui sont différents. Donc, on, on a - y'en a plus que juste qu'est-ce qui avait là. Okay? Et puis, ensuite, mon *Statement of Defence* n'a pas été barré, n'a pas été exclu. Y'a pas eu de motion. Il est devant nous. Il tient et j'ai plaidé ces choses-là. Et finalement, l'évidence - un, un autre point que j'ajoute au delà du point E ici dans ma liste là, ça serait le point F, c'est que quand on a fait la motion de champartie, y'a pas eu de procès. Y'a pas eu le décideur qui regarde le témoin dans les yeux et qui voit comme le témoin répond. Y'a eu rien de

ça et j'ai réussi à avoir des évidences en
faisant - en faisant des, des contre-
examinatoires des *affidavits*. J'ai vu les
expressions. J'ai vu ce qui c'est passé, mais le
5 juge n'a pas pu voir rien de ça. Donc, là aussi,
y'a, y'a, y'a un - y'aurait un gros problème
d'utiliser une telle motion interlocutoire pour
bloquer de l'évidence qui est nécessaire dans
l'action principale, dans le procès principal,
10 qui n'a jamais été entendu. Et donc, pour
conclure, et là, je vais à la page 7 de mon
document, je veux pouvoir utiliser ces évidences
où on parle que l'université paye les coûts de la
plaignante. Je veux pouvoir dire ça et je veux
15 pouvoir le dire pour deux raisons. Je veux
pouvoir le dire parce que ça appuie ce que j'ai
plaidé, que y'a un abus de processus, que le fait
que d'un côté la cause soit entièrement financée
et sans limite et qu'on dépense un montant énorme
20 d'argent versus une personne qui est auto-
représentée et ce simple fait a un impact sur cet
équilibre qu'on cherche quand on veut avoir de la
justice dans une cause en diffamation. C'est ça
une des choses que je plaide et donc, le
25 financement est directement pertinent parce que
c'est le financement même qui crée cet - ce
déséquilibre. Il est pertinent à ce que j'ai
plaidé et c'est comme ça que je veux l'utiliser
et en plus, je veux utiliser ce financement et
30 les autres évidences pour mettre au défi la
crédibilité de certains des témoins. Je veux

l'utiliser de cette façon là. Donc, c'est ça le but que je - c'est, c'est comme ça que je vais utiliser ces évidences. Et puis, ce que j'ai plaidé, pour résumer, y'a trois grandes branches d'abus de processus que j'ai plaidé qui sont explicitement noir sur blanc dans ce que j'ai plaidé. Un, c'est que il n'y a pas de dommages réels à la réputation dans cette cause et donc, la présomption d'un dommage de réputation est un problème dans cette cause ici et donc, y'a un - mon remède, c'est un abus de processus pour cette raison-là, mais vous savez, mon abus de processus inclus trois branches et c'est les trois branches qui font le tronc et qui ensemble, sont peut-être assez pour le remède que je cherche. Peut-être qu'individuellement, chaque branche est assez, mais si chaque branche n'est pas assez, peut-être que le tronc est assez et le [sic] deuxième branche sur ce tronc, c'est que l'action est un abus de processus parce que c'est - le, le, le financement est motivé de façon impropre pour me punir, pour m'intimider, même silencer et le troisième tronc, c'est que ce financement de l'université crée un déséquilibre, un asymétrie dans les moyens, dans les armes qui, qui est telle que ça déséquilibre cet équilibre que l'on cherche dans toute cause de diffamation, comme l'a bien expliqué la Cour suprême, de façon répétitive. Dans toute cause de diffamation, on cherche un équilibre dans les faits, dans les circonstances du cas entre la valeur de

l'expression libre et puis la protection de la réputation de la personne.

INTERPRETER: And then I continue. I'm now at paragraph 13 of this document, Compendium of Argument in Response. There's other important differences, significant differences with *Hill* and the case that we're dealing with. *Hill*, in that case, doesn't argue that there's an abuse of process, given that there's none or minimal damages, like I'm doing. So, the argument is very different. He doesn't argue either that, that the financing of the trial was an abuse because it was trying to silence a critic and to intimidate, like I'm doing. It wasn't like that. It wasn't that type of abuse of process and in *Hill*, *Hill* never argued that it was an abuse of process because the financing was throwing out the equilibrium between the protection of reputation and freedom of expression. That is not what he was arguing. He was arguing that it was a government, so we don't have to talk about equilibrium. It's blocked by the *Charter*. That's it. That's all. So, it's an argument about the statute, the law that *Hill* did. My argument is about the principle of the *Charter* and one must find the equilibrium in a defamation case when you follow the principles, the values of the *Charter*. So, there is another difference like that with *Hill* and as I already mentioned, he - *Hill* didn't do the defence of fair comment where this equilibrium is particularly important

because fair comment is a defence that is conceived to defend freedom of expression in public interest topics. So, it's - that is where it's very important to find the equilibrium and finally, in *Hill*, it is - we are not dealing with a case where the person who pays the plaintiff is also severely criticized by the words that we're complaining about. So, in other words, there was a criticism that - regarding the plaintiff. There wasn't a criticism of the government, per se but in my case, the articles we're complaining about criticize also Allan Rock and U of O and the plaintiff. So, it was - there's more of a link there regarding the abuse, more of a relationship, if you want. So, these are important differences, significant differences between the *Hill* case and the - our case. So, finally, I want to talk about a section before I conclude, which is a section within which I want to say that Justice Smith's decision in the champerty case are not relevant to the question that we're dealing with. Absolutely not. And let me explain why. And so now, I'm going to paragraph 15 of Compendium of Argument in Response, that document, and I explain on several points and I've added one since, why this decision of Justice Smith's is not relevant. So, I'm at paragraph 15, page 6 of the document. So, first of all, I'm not seeking to re-litigate because maintenance and champerty have been dealt with. Maintenance and champerty was to

5 establish, to know if the money was appropriate
or not. That was it. That's it, that's all.
This question was determined. It went up to the
Supreme Court. There's no other possibility of
re-litigating, absolutely not, and never would
that be my intention to try something that would
be - wouldn't be reasonable like that because
it's dealt with. I can't even bring an
10 application when the case is done with and to say
no, it's not okay for me to pay the damages,
'cause it was paid by the university. No,
maintenance and champerty, that is it. It's done
with. So, it's impossible to say that I want re-
litigate that question. Then - so, there's no
15 overlapping between the evidence in the case in
champerty and the case that's in front of us
today. Why? Because the evidence that is
worrying Mr. Dearden has been found not to be
pertinent to the champerty maintenance case but
20 parts of that evidence is very pertinent to what
I pled. Very relevant. So, it's not because it
wasn't relevant, that evidence, in the champerty
case that it won't be relevant when we're talking
about a question of freedom of expression in a
25 defamation cost. It's completely different. So,
that's why it's not relevant. That's why Justice
Smith's decisions are not relevant. So, the tort
of maintenance and champerty are distinct from
what I'm trying to do because I'm trying to show
30 an abuse of process centered on the value of
freedom of expression. Completely distinct.

The chart [sic] does not come into play at all, not in champerty and maintenance, except in a superficial way. And on top, the evidence that I want to bring in this trial are more than the evidence that had been excluded in the champerty motion. It's not - those are not the only pieces of evidence that I want to bring. There are other additional pieces of evidence that had not been brought forward in the champerty motion but that would come and undergrid my abuse of process remedy, but that are different. There are more than just what had been shown there. Okay? And after my Statement of Defence was not excluded. There was no motion. It's between - in front of us. It holds and I pled that - those things. And finally, the evidence, another point that is added beyond point E on the list, so point F, here it is. When we did the motion, the champerty motion, there was no trial. There wasn't somebody making a decision, looking at the witness in his or her eyes and seeing the witness answer. There was none of that. I was able to get evidence through cross-examination of affidavits. I saw the expressions. I saw what happened but the judge was not able to see any of that. So, here again, it would be an important problem here to use such an interlocutory motion to prevent evidence that is necessary in the main case, evidence that was never heard. So, in conclusion, so, in conclusion and now, I go to page 7 of my document. I want to be able to use

the evidence where the university is paying for the plaintiff's costs. I want to be able to say that and I wanted to say that for two reasons because, number one, it supports what I'm claiming is an abuse of process, that on one part, it's entirely financed without limit and that massive amounts of money are being spent versus one single self-represented litigant and that impacts the balance that we're seeking in the defamation suit. That's one of the things I've pled. So, financing is directly pertinent because it's the financing itself that creates that imbalance. It is pertinent to what I pled and that's how I want to use it. And moreover, I want to use that financing and other evidences to defy the credibility of certain witnesses. I want to use it that way. So, that's the aim I'm pursuing. That's how I'm planning on using that evidence and what I've pled, to summarize, there are three main prongs to abuse of process that I've pled. Black and white. Number one, there are no real damages to the reputation in this instant case. So, the presumption of damage to the reputation is a problem in this case. So, the remedy for me is an abuse of process but you know, my abuse of process is three pronged and the three prongs buttress this argument together make enough to be the remedy sought. Maybe each branch is sufficient but even if each branch is not sufficient, the combination can. That the backdrop is that it's an abuse of process because

5 the financing is motivated improperly to punish
me, intimidated [*sic*] me, and silence me. And
the third prong is that the financing by the
university creates an imbalance, a symmetry in
the resources in such a way that it destabilizes
the equilibrium sought in libel actions where the
Supreme Court has said that in all libel actions,
contextually in a case, the protection of the
person's reputation and the freedom of speech.

10 LE TRIBUNAL : Quel était votre premier tronc là
dans ça?

INTERPRETER: What was your first branch?

DENIS RANCOURT : Mon, mon premier tronc c'est
que - et ça revient à *Jameel*. C'est rattaché à
15 *Jameel*.

INTERPRETER: The first branch was related to
Jameel.

LE TRIBUNAL : Ah, okay.

DENIS RANCOURT : Mon, mon premier tronc...

20 LE TRIBUNAL : Okay, d'accord, oui, d'accord.
Mm-hmm.

INTERPRETER: Okay, yes.

DENIS RANCOURT : ...est qu'il n'y a pas de
dommages actuels, réels et, et que donc en soit,
25 dans une situation comme ça, on peut faire appel.

On peut plaider abus de processus. N'est-ce pas?

MR. RANCOURT: ...is that there are no real
damages. And therefore, in and of itself, one
could plead abuse of process. Isn't that right?

30 LE TRIBUNAL : Là, je comprends, oui.

INTERPRETER: Now, I understand.

DENIS RANCOURT : Oui, et puis donc, je peux conclure en disant la chose suivante, le défendant a plaidé ses abus de processus en long et en large. Je n'ai pas - quand vous allez lire, relire possiblement ce que j'ai plaidé, vous allez voir que je parle de ce financement et que je parle que ça serait impropre, que je parle ça serait inapproprié. Je parle que ça, ça causerait un déséquilibre dans cet équilibre que l'on cherche et j'ai plaidé tout ça avant de savoir que l'université donnait son financement. Ça l'a été découvert que après que j'ai plaidé, que, que l'université faisait ça, à travers la motion champartie et à travers des demandes de ma part et à travers des accès à l'information. Pendant des mois, on ne voulait pas répondre à mes questions, mais finalement, c'est vrai que l'université paye et je veux donc pouvoir plaider ça parce que c'est partout dans ce que j'ai plaidé. Je, je veux pouvoir amener cette évidence-là qui a été découverte et ma position, c'est que j'ai le droit d'amener des évidences qui sont consistents, qui sont pertinents, que j'ai le droit à priorie, à priorie. On peut faire des voir dire sur des évidences précises, mais à préorie, j'ai le droit d'amener ces évidences là qui sont plaidées, qui, qui, qui appuient ce que j'ai plaidé. Ça, c'est ma position et aussi je pense que ça serait un injustice fondamental à la dernière minute, quand on est rendu au procès, d'attaquer ce que j'ai

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plaidé d'une façon aussi fondamentale et de
m'enlever une défense entière, qui est celle
d'abus de processus avec ces trois troncs, de
m'enlever ça complètement, à la dernière minute,
alors qu'on est devant - on est, on est en procès
alors que pendant plus de trois ans, y'a eu
aucune indication qu'on allait attaquer mon
Statement of Defense, aucune, mais c'était plutôt
le contraire. On a eu énormément de découverte,
des, des motions de, de refus, toute sorte de
choses et jamais, on a suggéré qu'on allait faire
ça et on l'a jamais fait et en plus ce que j'ai
plaidé, on y a répondu en détail dans un *reply* et
maintenant, on voudrait m'enlever des
paragrapes. Alors, je trouve que ça serait une
injustice assez fondamentale et je peux clore mon
argument de cette façon-là.

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INTERPRETER: So, I can conclude by saying the
following: the defendant has pled widely abuse
of process. I don't know when you will read and
re-read what I said. I speak of this financing
and how it was improper. I speak of how it would
be an imbalance in the - the balance sought and I
pled all of that before I even found out that the
university was financing. It was only discovered
subsequently by the champerty motion and requests
that I made and through access to information
requests made over months. For months, my
questions were not being answered but now, it's
true. It's a fact that the university is paying
and I want to be able to plead that because it's

5 everywhere where I'm pleading. I want to be able
to proffer that evidence and my position is that
I have the right to proffer evidence that are
pertinent, that are consistent, that I have the
right, the *prima facie* right to present evidence,
specific evidence that are pled, that support the
pleadings. That is my position. And also, I
10 think that it would be a miscarriage of justice
fundamentally, at the last moment, now that we
are at trial, to attack what my pleadings were in
such a fundamental way by striking an entire
defence that is the claim of abuse of process.
To remove that, at the last minute, now that we
are before - we're at trial, whereas for over
15 three years, more than three years, there was no
indication that my Statement of Defence would be
undermined. In fact, it was the opposite. There
were numerous discovery and for all kinds of
matters and never was it suggested that that was
20 going to be done and that was never done. And
moreover, I pled that and it was in replied to,
in reply. And now, we are seeking to strike
paragraphs. I think it would be a fundamental
injustice. And I can conclude on that, Your
25 Honour.

LE TRIBUNAL : Merci.

INTERPRETER: Thank you.

THE COURT: Any reply?

MR. DEARDEN: Oh, I have reply.

REPLY SUBMISSIONS BY MR. DEARDEN:

5 MR. DEARDEN: Your Honour, just dealing with that
last point that Mr. Rancourt made. Just because
he pleads something called litigation by proxy,
contrary to the *Charter*, doesn't make it the law
'cause he pleaded it. I'm not moving to strike
here as I stand here today. You're in a *voir*
10 *dire* making a ruling on the relevance of evidence
that this defendant wants to put before the jury
and there is no such defence in the law in
Canada. None.

DENIS RANCOURT : Excusez-moi, Monsieur le juge.

MR. DEARDEN: He says...

15 DENIS RANCOURT : Juste un point.

INTERPRETER: I'm sorry, Your Honour. Just one
point.

MR. DEARDEN: No, no.

20 DENIS RANCOURT : Est-ce que une réponse, ça ne
doit pas être des choses nouvelles? C'est ce que
j'avais compris parce que...

INTERPRETER: Is the - shouldn't a reply are to
be new points? That's...

25 LE TRIBUNAL : Oui, non, il répond à votre point.
C'est parce que vous avez dit : « Je l'ai plaidé.
Tout a été plaidé. » Non, non, c'est correct.

THE COURT: Well, he's replying to your point.
You said, "I've pled it. Everything's been
30 pled." No, no, it's proper reply.

DENIS RANCOURT : Ah, bon, okay. Je croyais
qu'il répétait ce qu'il avait dit au début.

INTERPRETER: I'm sorry, I thought he was repeating.

MR. DEARDEN: Your Honour, he says in the - these are - I'm just going off the last two points and then I'll get to what he was - the defendant was submitting, prior to the break. Two times in the last five minutes, he said - the defendant said, financing was motivated to punish and silence him and financing was improper. Yet he, this defendant, insists that Justice Smith never made any rulings in the abuse of process motion he dismissed. I remind Your Honour of paragraph 91 of Justice Smith's decision.

"Rancourt is speculating that the university had other improper motives, namely to silence him. However, they are not supported by any evidence as his allegations do not - his allegation denied by President Rock, by St. Lewis, by Dean Feldthusen and by Mr. Giroux."

In paragraph 92,

"Rancourt's speculation that the university agreed to pay St. Lewis' legal costs of her defamation action in order to silence and stigmatize him is unsupported by any evidence."

How can this defendant say to Your Honour that this wasn't ruled on previously? Those issues were point blank in play in the abuse of process motion that was dismissed. And then I'm hearing he also wants to use it to attack the credibility

of witnesses. Justice Smith has ruled on this factually. He's ruled on it factually. Mr. Rancourt says, "Oh, no, no, he just ruled that there was no champerty and maintenance." But his factual findings dealt with motive and contrary to the submissions that you just heard from this defendant that the financing was improper and that it was motivated to punish and silence him, Justice Smith has point blank said that's wrong. He disagreed with this defendant on those submissions, which we argued *ad nauseum* during this champerty motion. So, that's my response there. Then, he said, I'm not re-litigating as it's, you know, maintenance and champerty as if you can put it in a box and forget about it for the rest of your life. Again, he is absolutely re-litigating motive or attempting to re-litigate motive and Justice Smith has said numerous times in those passages that I read to you earlier, he's dealt with motive and rejected this defendant's submissions point blank on that. Now, Your Honour, this *Jameel* case, this Wall Street Journal, *Jameel* case, let's get it right. Okay? This was a plaintiff who sues the Wall Street Journal, which is mainly published in the United States of America, in England, because their laws of libel, like Canada's laws of libel, are drastically different than the U.S., drastically different. There's no New York Times v. Sullivan defence available in England or here in Canada. So, there is only a few of the

5 publications. It was a small publication of the
Wall Street Journal about Mr. Jameel and it's -
that's why we call it libel tourism. The
10 plaintiff is a libel tourist. He's picking, he's
forum shopping the best jurisdiction to go to, in
order to try to win against the Wall Street
Journal. And this concept that, you know, if you
have minimal damage, then you might have an abuse
of process claim. That's England. And what he
15 didn't - what the defendant didn't point out to
you that in paragraphs 40 and 41 the Court said,

"We accept that in the rare case, [in the
rare case] where a claimant brings an action
for defamation in circumstances where his
15 reputation has suffered no or minimal actual
damage, this may constitute an interference
with freedom of expression that is not
necessary for the protection of the
claimant's reputation. In such
20 circumstances, the appropriate remedy for
the defendant may well be to challenge the
claimant's resort to English jurisdiction or
to seek to strike out the action as an abuse
of process. We are shortly to consider
25 such an application. An alternative remedy
may lie in the application of cost
sanctions. For this - for these reasons, we
are not persuaded that the presumption of
damages that forms part of the English law
30 of libel is incompatible with Article 10 of
the Convention."

5 So, the convention is Article 10 is the freedom
of expression right under the European convention
but they still uphold - upheld, Your Honour, they
still upheld that if the plaintiff proves the
words are published, it refers to the plaintiff
and are capable of defamation, the words are
false and the presumption is the plaintiff
suffered damages. They upheld that here. So,
10 Your Honour, I didn't have to move to strike
paragraphs 61 to 67. Like I said, you know,
people can try to plead any kind of new law that
they think is out there or make up a completely
new defence, which is what this defendant did,
but that doesn't make it the law. He's got to
15 have it as the law. Your ruling isn't governed
by the motion to strike test that he kept on
repeating to you. And I'm not arguing, Your
Honour, I'm not arguing that he - that Mr.
Rancourt cannot say that Professor St. Lewis
20 didn't suffer any damage to the jury. He does
that at his own peril. And I'll put on record
right now, it wasn't - it's not very comfortable
for Professor St. Lewis to hear this defendant
say she suffered no damage. It's not - it's - it
25 boggles my mind that he'd be making that
submission, but at any rate, I'm not preventing
him from making that argument to the jury, at
all. He can cross-examine Professor St. Lewis
and anybody else he thinks is gonna prove that
30 she suffered no damage. The law's still the
same. Damage is presumed. General damages are

presumed if Professor St. Lewis proves one of those things is capable of being defamatory because he's admitted that he published and he's admitted that those words refer to the plaintiff. So, the only third prong of the libel action that Professor St. Lewis needs to convince you of is it's capable of being defamatory. Any one of those stings. And let's just be clear, Your Honour, about what rule that the defendant brought his motion before Justice Smith. It was Rule 21.01(3)(d), the abuse of process ground. He moved to have this libel action stayed or dismissed on the ground that it was an abuse of process and he based it on champerty, which involves looking at motive and the motive was held up umpteen times, upheld by Justice Smith as pure speculation by Mr. Rancourt and unfounded and that the motive was proper for funding this lawsuit. Now, you noted Your Honour, that Mr. Rancourt made a submission there was no overlapping in the facts. No overlapping in the facts in the champerty motion and this so-called proxy by litigation defence, but yet that contradicts paragraph 10 of his compendium, which says there is some evidentiary overlap between the champerty motion and the particulars of abuse of process that he pleaded in his Statement of Defence. Paragraph 10 of his compendium, he admits the overlap, contrary to his oral submission that there was no overlap but, Your Honour, could I ask you to look at the Statement

of Defence, 'cause I don't see abuse of process in paragraphs 61 to 67. It's at tab - I've put it at Tab 2 of the compendium. I don't see abuse of process in there. What I do see, Your Honour, in paragraph 63...

THE COURT: Yeah.

MR. DEARDEN: ...is,

"It is inconsistent with section 2(b) of the *Charter* for a government entity such as a university to use government funds to enable a civil action for defamation by an employee."

MR. DEARDEN: Your Honour, first of all, that's - would be his freedom of expression, the defendant's freedom of expression would be violated by these acts. Okay? And then if you turn to paragraph 65, the defendant pleads, or 64, he pleads there's an absolute privilege and then in 65, in a case such as this one, a balance between an individual's protection against defamation and the freedom of speech criticism protected by the *Charter* and a key societal public institution cannot be achieved if an individual plaintiff benefits from improper or interested enabling party's support. Justice Smith has found it wasn't improper. It's, and again, this is his *Charter* freedom of expression that is invoked here, the defendant's. And that's why he has to get through section 32. Just like the Carleton U students had to pass the constitutional requirements of section 32...

THE COURT: Now, you may be repeating an argument

You've already made, eh?

MR. DEARDEN: Okay.

THE COURT: I got that. I mean...

MR. DEARDEN: Okay.

THE COURT: ...yeah.

MR. DEARDEN: And then, again, Your Honour, well, the point here is he's saying this is all an abuse of process, but no, it's a *Charter* claim, a breach of his *Charter* rights. And then lastly, Your Honour, the defendant argues that there has to be a - the common law has to be developed consistent with *Charter* principles. That's correct. That's correct. It has to - the *Charter* does have to be. Can I ask Your Honour to turn to the Book of Authorities of Professor St. Lewis? Tab 13 is a Supreme Court of Canada, part of the Supreme Court of Canada's decision on Hill v. Church of Scientology. It's a half an inch thick so we didn't reproduce the whole thing, Your Honour, but this was what an attempt by the Church of Scientology, when the government funded the libel action, to change the law of libel in Canada, pursuant to the *Charter* to be a New York Times v. Sullivan test like the U.S. So, the absence of malice. If you're a public figure or a public official, if the plaintiff doesn't prove you've got malice, you're out. You don't win. Hugely different than what the law is here in Ontario and the rest of Canada. So, if you look at paragraph 82, Your Honour, it's on page 1-1-6-4, just before the green tab that separates that page from the next section...

THE COURT: Yes.

MR. DEARDEN: ...the Supreme Court says,
"There is no government action involved in
this defamation suit. It now must be
determined whether a change or
modification in the law of defamation is
required to make it comply with the
underlying values upon which the *Charter*
is founded."

So, they go - if you turn - if you go past the
green page, Your Honour, they - that's where they
deal with New York Times v. Sullivan. So, this
is through the law that - this is how the Church
of Scientology argued the common law should be
developed in accordance with the *Charter*. Let's
have the New York Times v. Sullivan decision.
Okay? And you see that at page 1-1-8-7 or
paragraph 1-37, 1-38. If you turn the page to
paragraph 1-39, Justice Cory says,

"None of the factors, which prompted the
United States Supreme Court to write the
law - re-write the law of defamation in
America are present in the case at bar.
First, the appeal does not involve the
media or political commentary about
government policies. Thus the issue is
considered by the high court of Australia
in *Thesamis* (ph)..."

or however you pronounce that...

"...are also not raised in this case and
need not be considered. Second, a review

of jurisprudence in Canada reveals there's no long - no danger of numerous large awards threatening the viability of media organization. Finally, in Canada, there is no broad privilege afforded to the public statements of government officials, which needs to be counterbalanced by a similar right of private individuals. In conclusion, in its application to the parties in this action, the common law of defamation complies with the underlying values of *Charter* and there is no need to amend or alter it."

Now, Your Honour, the New York Times v. Sullivan case wasn't even an absolute privilege case. It's not, you know, the Supreme Court rejects changing our law for a lesser defence than what the defendant is advocating for you today, which he wants an absolute privilege. The Supreme Court of Canada didn't even change the common law to tweak it to what a New York Times v. Sullivan standard. So, there is no basis for this litigation by proxy, contrary to the *Charter* arguments that Mr. Rancourt wants to make and to introduce evidence on that basis. And subject to Your Honour's questions, that's my reply.

DENIS RANCOURT : Est-ce que je peux faire un commentaire parce que quelque - y'a un truc monsieur Dearden a dit qui pourrait réduire la, la Cour en erreur. Il a dit que les mots *abuse of process...*

INTERPRETER: May I make one comment, because there is something Mr. Dearden said that could lead you to error. He said "abuse of process."

LE TRIBUNAL : Je vais vous laisser un point là très, très court.

DENIS RANCOURT : Oui.

LE TRIBUNAL : C'est quoi?

INTERPRETER: I'm going to leave you one point, very short.

DENIS RANCOURT : Il a, il a dit que les mots *abuse of process* n'étaient pas dans mon *pleading*. C'est, c'est complètement faux. Ils sont là trois fois, explicitement, *abuse of process* et en plus, y'a les mots *improper*. Il, il faut savoir que je ne suis pas un avocat, mais y'a le mot *improper* qui apparaît à plusieurs fois.

INTERPRETER: He said abuse of process were not in my pleadings. That's absolutely false. They're there three times, exclusively, abuse of process. And on top of that, the words improper, you must know that I'm not a lawyer but the word improper appears several times.

LE TRIBUNAL : Laissez faire *improper*, mais vous dites que vous avez plaidé *abuse of process* dans votre...

INTERPRETER: Never mind improper, but you're saying that you pled abuse of process?

DENIS RANCOURT : Bien sûr et je l'ai lu au début de mon argument.

INTERPRETER: Of course.

LE TRIBUNAL : C'est paragraphe quoi?

INTERPRETER: Which paragraph?

DENIS RANCOURT : Dans le paragraphe - le - le même paragraphe que monsieur Dearden a prononcé, 67, par exemple, y'a *abuse of process*. Et si on reprend - si on reprend mon *factum*, je, je l'ai souligné. Je l'ai *highlighté* le, les, les mots dans, dans - regardez. Regardez - c'est parce que monsieur Dearden se, se concentre juste sur certains paragraphes et puis, il, il dit des choses qui sont pas vrais à propos de ces paragraphes. Au paragraphe 67, je...

INTERPRETER: The same paragraph that Mr. Dearden used, 67, for example, abuse of process. And if you were to go over my *factum*, I highlighted that - I underlined it, those words. And look, look in - it's at Mr. Dearden - he's focusing only on certain paragraphs and he says things that are not (inaudible). So, paragraph 67...

LE TRIBUNAL : Là, vous regardez - c'est votre *factum* là vous regardez les...

INTERPRETER: So, it's your *factum*?

THE COURT: Okay.

LE TRIBUNAL : Juste une minute là.

DENIS RANCOURT : Oui, je, je reviens à mon *factum*.

INTERPRETER: Yes, I'm coming to my *factum*.

MR. DEARDEN: It's in Tab 2, Your Honour, of the compendium.

DENIS RANCOURT : À la, à la page 5 de mon *factum*, il y a cinq paragraphes qui viennent directement...

INTERPRETER: Page 5 of my factum. For five paragraphs, it comes directly...

LE TRIBUNAL : Oui, oui, okay.

INTERPRETER: Yes, okay.

DENIS RANCOURT : Et je souligne *abuse of process* et ils apparaissent - le, le terme apparaît deux fois, une fois au paragraphe 67 où je dit : « *The incident action is intended to punish, intimidate...* » etcétéra, « *...thus is an abuse of process.* » Et après ça, j'explique qu'il y a pas de dommages pendant trois paragraphes et à la - ayant expliquer que y'avait pas de dommages pendant trois paragraphes, au paragraphe 71, j'explique que le fait que y'a pas de dommages et qu'on me poursuit, est un abus de processus qui est exactement la chose de *Jameel* et j'utilise le terme « *abuse of process* » au paragraphe 71.

INTERPRETER: So, I underline abuse of process and those words at paragraph, twice, once, in 67 and after I explain that there's no damages for three paragraphs lengths, and having explained that there are no damages for three paragraphs, in paragraph 71, I explain that the fact that there are no damages and that I'm being sued is an abuse of process, which is exactly what is linked to *Jameel*. I use in 71, paragraph 71, abuse of process. In the...

MR. DEARDEN: Your Honour, my point there was that...

DENIS RANCOURT : Donc...

MR. DEARDEN: ...that is what Justice Smith -

remember I said Rule 21.01...

THE COURT: Yeah.

MR. DEARDEN: ...21.01(3)(d), that's the wording from that rule, and that paragraph was the abuse of process motion before Justice Smith, frivolous, vexatious or an abuse of process. That's the rule that I've cited.

DENIS RANCOURT : Non.

MR. DEARDEN: The rule...

DENIS RANCOURT : Monsieur Dearden a dit devant la Cour...

MR. DEARDEN: ...21.01(3)(d).

DENIS RANCOURT : ...que ça n'apparassait pas dans...

LE TRIBUNAL : Okay.

DENIS RANCOURT : ...ce que j'ai plaidé, mais ici...

INTERPRETER: No, Mr. Dearden said in front of the court that it didn't show in what I pled. And I...

LE TRIBUNAL : Okay, bien j'ai tout ça là puis je vais prendre ça en - avant de libérer.

THE COURT: Okay, I have all that and I will check that out.

DENIS RANCOURT : Et est-ce que je peux faire un autre commentaire en réponse à quelque chose que monsieur Dearden a dit?

INTERPRETER: And may I make another comment in reply to what Mr. Dearden said?

LE TRIBUNAL : On peut - ça peut durer éternellement, mais...

INTERPRETER: Well, we could be here eternally.

It's up to you.

DENIS RANCOURT : Bien c'est, c'est libre à vous, mais moi, je trouve ça excessif que monsieur Dearden puisse dire *completely new defense* de façon répétitive et lui donner un nouveau nook - nom qu'il lui donne.

INTERPRETER: I find that excessive that Mr. Dearden can say completely new defence repeatedly to give it a new name that he gives.

LE TRIBUNAL : J'ai vos arguments. J'ai les siens et puis...

DENIS RANCOURT : D'accord.

LE TRIBUNAL : ...on va décider. Bon. Donc...

INTERPRETER: I have your arguments. I have his and I am going to decide. So...

THE COURT: So, we're hearing the subpoena motion at two, eh? Or is that what we said or....

DENIS RANCOURT : Oui.

MR. DEARDEN: Yes, Your Honour.

DENIS RANCOURT : Oui, exactement.

INTERPRETER: Yes. Exactly.

THE COURT: So, and...

DENIS RANCOURT : Monsieur le juge, je dois soumettre ma réponse...

LE TRIBUNAL : À 11 heures.

DENIS RANCOURT : ...à 11 heures et je vais donc le soumettre par courriel parce que sinon, je n'aurais pas le temps de la faire.

INTERPRETER: Your Honour, I must submit my reply at 11 so I'll do it by email otherwise I won't have time to do it.

LE TRIBUNAL : C'est bien.

INTERPRETER: That's fine.

DENIS RANCOURT : Merci.

INTERPRETER: Thank you.

...WHEREUPON THESE PROCEEDINGS WERE ADJOURNED

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Joanne St. Lewis v. Denis Rancourt
Certification

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I, FRANCINE BOURQUE, certify that this document is a true and accurate transcription of the recording of Joanne St. Lewis v. Denis Rancourt in the Superior Court of Justice held at 161 Elgin Street, Ottawa, Ontario taken from Recording(s) No. 0411_CR34_20140512_095510 and 0411_CR36_20140512_1137132, which has been certified in Form 1 by R. Commodore.

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SUPERIOR COURT OF JUSTICE

5

B E T W E E N :

JOANNE ST. LEWIS

(Plaintiff)

10

DENIS RANCOURT

(Respondent)

15

P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE JUSTICE M. CHARBONNEAU
on May 13, 2014, at BRAMPTON, Ontario

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25

APPEARANCES:

P. Doddy

Counsel for the University of Ottawa

30

R. Dearden

Counsel for Joanne St. Lewis

D. Rancourt

In Person

(i)
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E X H I B I T S

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Legend

[sic] - Indicates preceding word has been reproduced
verbatim and is not a transcription error.
(ph) - Indicates preceding word has been spelled
phonetically.

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1.
Joanne St. Lewis v. Denis Rancourt
Submissions by Mr. Doody

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TUESDAY, MAY 13, 2014

THE COURT: Good afternoon.

MR. DEARDEN: Good afternoon.

LE TRIBUNAL : Bonjour.

DENIS RANCOURT : Bonjour, Monsieur le juge.

INTERPRETER: Hello, Your Honour.

THE COURT: Mr. Doody?

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SUBMISSIONS BY MR. DOODY:

MR. DOODY: Thank you, Your Honour. Your Honour,
if I could have you - what you'll need for this
motion, Your Honour, is three things. First, is
the motion record. Hopefully, you've got a hard
copy of that?

THE COURT: Yes.

MR. DOODY: My factum and authorities and then
this morning at about half past ten, the
defendant, Mr. Rancourt, delivered electronically
a copy - a responding factum...

THE COURT: Yeah, and I've...

MR. DOODY: ...and does Your Honour have that?

THE COURT: ...printed that, yeah.

MR. DOODY: Okay, excellent.

CLERK REGISTRAR: I'm sorry, Mr. Doody, I've
forgot your first initial...

MR. DOODY: P.

CLERK REGISTRAR: ...and I need it for my - thank
you. Thank you very much.

MR. DOODY: Your Honour, this is a motion to
quash some of the summonses in part and the

2.
Submissions by Mr. Doody

defendant, by his factum delivered this morning, conceded much of the motion. So, it's much more narrowly focused than it would have been and it would be of assistance, I believe, if I could take you to both his factum and my factum to let you know what is still in issue. So, if you turn to my factum, Your Honour, at page seven and there, I've set out a list of issues under paragraph 16 in subparagraphs (a) through (f) and Mr. Rancourt in his factum at page three, in paragraph three, he writes, "The six issues in the motion, that is (a) through (f), can for convenience be referred to as issue A to issue F. The defendant does not contest the refusals to produce the documents in issue A, B, C or D. As such, issue A to issue D are completely settled. The defendant does not admit solely issue E and issue F." And so looking at my factum, Your Honour, the first issue, whether a motion to quash a summons may be brought before the trial judge, the defendant concedes that. Secondly, whether a summons to witness, which requires production of both documents, which may properly be the subject of a summons and documents, which may not properly be the subject of a summons can be quashed in part or read down so as to require production of only those documents, which may properly be required. The defendant concedes that. Thirdly, whether paragraphs 12 and 23 of the summons to witness directed to Allan Rock, paragraphs six and seven of the summons to

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Submissions by Mr. Doody

witness directed to Bruce Feldthusen and paragraph six of the summons to witness directed to Stephane Emard-Chabot are too broadly based and constitute fishing expeditions. The defendant does not contest that. He, in effect, admits that they are too broadly based and constitute fishing expeditions. And fourthly, whether the documents described in Schedule A to the Notice of Motion are protected by solicitor client privilege and Schedule A to the Notice of Motion, Your Honour, lists 98 specific documents and the defendant concedes that they are protected by solicitor client privilege. So, what remains in issue are issues E and F and that is whether the documents described in Schedule B to the Notice of Motion are protected by litigation privilege and Schedule B to the Notice of Motion lists eight documents and, in fact, if you have it there in front of you - I believe you do, Your Honour - the defendant concedes item seven is - he concedes that that is protected by litigation privilege. So, it's items one through six and item eight on Schedule B are still an issue and he concedes all of Schedule C, which is a list of some 30 documents, which my clients take the position are irrelevant to the facts in issue in this litigation. So, what's left in issue is B and C and if Your Honour could take my factum and go to the order requested, which is at page 13.

THE COURT: Yes.

MR. DOODY: I've set out there the specific orders that I'm seeking, taken from the Notice of Motion and it - if we could go through them, I could indicate what, on the basis of his concessions, are orders that, in effect, are not in issue, that Mr. Rancourt is not contesting and that this Court should issue. That is 44(a), the summons to witness to Allan Rock be quashed in so far as it requires him to produce - and this is the very broad description - all University of Ottawa documents about the St. Lewis and Rancourt litigation and/or about paying the cost of the plaintiff in the said litigation, including and not limited to all invoices. Twenty-three at the top of page 14, Mr. Rancourt is conceding that the summons should be quashed in so far as it asks for all emails and communications between Allan Rock, who is the president of the university and Bruce Feldthusen, who was the Dean of Common Law about the St. Lewis and Rancourt litigation and/or about Mr. Rancourt. Secondly, under subparagraph (b) on page 14, he's conceding that the summons to witness to Bruce Feldthusen should be quashed in so far as it requires him to produce all your emails and communications with Allan Rock and/or others about Denis Rancourt, including and not limited to about Denis Rancourt's U of O Watch blog and/or about any media or web articles that mention Denis Rancourt and number seven, all your documents, including and not limited to all communications about the

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St. Lewis and Rancourt litigation. And next, he's conceding that the summons to witness to Stephane Emard-Chabot should be quashed in so far as it requires him to produce all your documents and documents about the St. Lewis and Rancourt litigation, including and not limited to about paying the litigation cost of Joanne St. Lewis. And the next subparagraph (d), he is conceding that the summonses to witnesses, to Allan Rock and to Bruce Feldthusen, be quashed in so far as they require production of the documents described in Schedule A to the Notice of Motions, Schedule A being the solicitor client privileged documents. That's what he's conceding. He's not conceding with respect to B and C and it's - it appears to me that he's conceding the next subparagraph as well, that the summons to witness to Allan Rock, dated February 20th be quashed in so far as it requires him to produce invoices or reports from the university's lawyers or other documents protected by solicitor client privilege or litigation privilege of the University of Ottawa. For those, that's what he's conceded and what's left at issue is the litigation privilege documents and the documents, which the university says are irrelevant. Dealing with the issue of litigation privilege first, the demand for production or rather the summons, directed to Mr. Rock, the president of the university, included a demand that he produce all documents, which are relevant, including invoices and I'm not sure,

frankly, from the - from what my - from what Mr. Rancourt gave me this morning, whether he's conceding that the invoices from B.L.G., that is my firm, to the university are, whether he's conceded that those are not producible.

DENIS RANCOURT : Oui, je peux confirmer ça.

MR. DOODY: Thank you.

INTERPRETER: Yes, I can confirm that.

MR. DOODY: So, there's no question about the invoices and I take it the reports from B.L.G., my reports to my client?

DENIS RANCOURT : Bien sûr.

INTERPRETER: Of course.

MR. DOODY: That assists, Your Honour. I'm just gonna check my notes here. So, if I could then turn to the general subject of litigation privilege and if I could just take you to the law, Your Honour, and if I could have you turn up my factum and Book of Authorities to Tab 10, which is the decision of the Supreme Court of Canada in the case of Blank v. Canada, a 2006 decision and it arose - this case arose out of an attempt to obtain production of documents for which litigation privilege and solicitor client privilege were sought under the *Access to Information Act* and if Your Honour turns to page six of the decision at paragraph 27, bottom of the page, the court decision, reasons of Justice Fish concurred in by five other judges writes, the bottom of the page,

"Litigation privilege, on the other hand,

is not directed at, still less, restricted to, communications between solicitor and client. It contemplates, as well, communications between a solicitor and third parties or, in the case of an unrepresented litigant, between the litigant and third parties. Its object is to [infer the - is to] ensure the efficacy of the adversarial process and not to promote the solicitor-client relationship. And to achieve this purpose, parties to litigation, represented or not, must be left to prepare their contending positions in private, without adversarial interference and without fear of premature disclosure." And the court goes on to cite an article by Robert Sharpe, now Justice of Appeal Sharpe, and in the next paragraph, Justice Fish writes, "R. J. Sharpe has explained particularly well the differences between litigation privilege and solicitor-client privilege:" And quoting, "It is crucially important to distinguish litigation privilege from solicitor-client privilege. There are, I suggest, at least three important differences between the two. First, solicitor-client privilege applies only to confidential communications between the client and his solicitor. Litigation privilege, on the

other hand, applies to communications of a non-confidential nature between the solicitor and third parties and even includes material of a non-communicative nature."

Stop there. So, litigation privilege does not apply only to communications and it does not apply only to material intended to be confidential, that is confidential in the hands of the party to the litigation. And he goes on to say,

"Secondly, solicitor-client privilege exists any time a client seeks legal advice from his solicitor, whether or not litigation is involved. Litigation privilege, on the other hand, applies only in the context of litigation itself."

And skipping down to the next paragraph in the quote, Your Honour, about four lines from the end of the quote, Mr. Sharpe writes,

"Litigation privilege is based upon the need for a protected area to facilitate investigation and preparation of a case for trial by the adversarial advocate."

And the test, Your Honour, to determine whether a document is subject to litigation privilege is clearly set out in the next case, the next tab in the book, Your Honour, which is the case of Mamaca, M-A-M-A-C-A, v. Coseco Insurance Company and there are two decisions here. One is an interlocutory decision of Justice J. MacDonald and the other is a decision of Justice Pitt

5 denying leave to appeal. So, if I could take you
to the first decision at Tab 11, Justice
MacDonald's decision and this is an appeal from a
master on a motion involving production of
documents and at page five of the decision,
Justice MacDonald wrote at paragraph 16 the
second paragraph on the page,

10 "The appellant...submits that the Master
erred in following a two step approach to
the determination of litigation
privilege. The two steps were:

- 15 a) On what date was there a reasonable
apprehension of litigation? [and]
b) For each document prepared after that
date, was the dominant purpose in
preparing the document to assist in the
apprehended litigation? In my opinion -
[Justice MacDonald writes] - the master
did not err in holding, in the
20 circumstances of this case, that a two
step procedure should apply to the
adjudication of the appellant's litigation
privilege claim."

25 So, those are the two questions, on what date was
there a reasonable apprehension of litigation?
And we know that in this case, Your Honour, it
was no later than January 17, 2011, when I wrote
Mr. Rancourt. It's in the affidavit of Miss
30 Sukkot (ph). I wrote Mr. Rancourt and told him
that the university would be applying to
intervene in the motion, the champerty motion he

5 brought and secondly, was the dominant purpose in preparing the document to assist in the apprehended litigation? And on the leave to appeal application, Justice Pitt, following the blue sheet at the same tab, dismissed the leave application and if I could ask you to turn up page six of Justice Pitt's decision, paragraph 24, Justice Pitt wrote,

10 "There is no reason to grant leave to appeal in respect of the appeal judge's characterization of the dominant purpose test. The plaintiff's characterization of the general trend of the law in Ontario is more persuasive as is the plaintiff's
15 analysis of the significance of the ratio in *Chrusz*. The defendant has not been able to point to conflicting authorities on the questions of law, nor has the defendant demonstrated an error in the
20 appeal judge's reasons."

25 So, that is the question, was the dominant purpose in preparing the document in question to assist in the litigation? And if Your Honour turns to my Motion Record and to the affidavit of Julie Sukkot, which is at Tab 2, page 15 of the record, Miss Sukkot swears this...

THE COURT: I have 13, but I suppose it's the same after that.

30 MR. DOODY: Oh, you have - well, the first page is page 13, but the paragraph I'm quoting is page 15.

THE COURT: Oh, you're at 15...

MR. DOODY: Yeah.

THE COURT: ...I'm sorry, I'm sorry. I thought you were referring to the affidavit as...

MR. DOODY: It - well, it is the affidavit.

THE COURT: Okay, fine.

MR. DOODY: It's...

THE COURT: At paragraph?

MR. DOODY: Paragraph 14 of the affidavit.

THE COURT: Okay. Mm-hmm.

MR. DOODY: "I have reviewed all documents described in Schedule B to the Notice of Motion."

And she's attached it as Exhibit N to the affidavit. "It is apparent from the face of each of those documents that they were created for the dominant purpose of assisting in this action."

And if you turn to Schedule B, and you could just turn up tab N, which is the exhibit attached to her affidavit, that's the list of documents, which Miss Sukkot has sworn is apparent from

their face that they were prepared for the dominant - created for the dominant purpose of assisting in this action. So, in my respectful submission, Your Honour, the evidentiary basis has been laid to establish the litigation

privilege but Mr. Rancourt has effectively three answers to that assertion and if I could have you turn up his factum and starting at page three of his factum, paragraph five, he says the three things. The first is, starting at the - paragraph seven at the bottom of page three, he

5
says, "The documents were relevant to the champerty motion and the champerty motion is over." And he says that in paragraph seven. And then in paragraph eight on the next page, he cites and quotes from the decision of the Supreme Court in *Blank* where, as he points out, the Supreme Court says,

10
"That litigation privilege ends when the litigation to which it relates ends."

15
So, that's his first point, that the litigation to which the litigation privilege relates is over and therefore, the privilege is over. His second point, which is at paragraph ten of his factum is that, "A communication between a non-party witness and a non-party person cannot be litigation privileged because litigation privilege is tied to the parties in the litigation." And then thirdly, in paragraph eleven, he says, "Furthermore, on its face, document 8 in Schedule B cannot be considered litigation privilege because it is not about preparing or researching for an action in progress and the university is not a party to the action." And document eight in Schedule B, Your Honour, document eight in Schedule B is a bundle of documents consisting of invoices from Gowling's to the University of Ottawa re: the provision of legal services to the plaintiff, Joanne St. Lewis. So, Mr. Rancourt is saying because it's not about preparing or researching for the action in progress. It is not litigation

20
25
30

5 privileged and also because it's - the university
is not a party. So, let me deal with those each
in turn. Firstly, the notion that the documents
are not privileged any more because the
litigation is over, if I could take you back to
the *Blank* decision, Your Honour. Mr. Rancourt
did quote from it, but he didn't quote all of the
relevant passages. *Blank* is at Tab 10 of my Book
of Authorities and I take you to tab - to page
10 eight of the decision. This is what the Supreme
Court of Canada said at page eight, paragraphs 34
through 39. And Justice Fish wrote this,

15 "The purpose of the litigation privilege, I
repeat, is to create a 'zone of privacy' in
relation to pending or apprehended
litigation. Once the litigation has ended,
the privilege to which it gave rise has
lost its specific and concrete purpose -
and therefore its justification. But to
20 borrow a phrase, the litigation is not over
until it is over: It cannot be said to
have 'terminated', in any meaningful sense
of that term, where litigants or related
parties remain locked in what is
25 essentially the same legal combat.

30 Except where such related litigation
persists, there is no need and no
reason to protect from discovery
anything that would have been subject
to compellable disclosure but for the

5 pending or apprehended proceedings
which provided its shield. Where the
litigation has indeed ended, there is
little room for concern lest opposing
counsel or their clients argue their
case 'on wits borrowed from the
adversary,' to use the language of the
U.S. Supreme Court in *Hickman*."

10 I therefore agree with the majority in
the Federal Court of Appeal and others
who share their view that the common
law litigation privilege comes to an
end, absent closely related
15 proceedings, upon the termination of
the litigation that gave rise to the
privilege:"

And at paragraph 38 he writes,

20 "As mentioned earlier, however, the
privilege may retain its purpose - and,
therefore, its effect - where the
litigation that gave rise to the
privilege has ended, but related
litigation remains pending or may
25 reasonably be apprehended. In this
regard, I agree with [Justice]
Pelletier [the Federal court of Appeal]
regarding 'the possibility of defining
...litigation more broadly than the
30 particular proceeding which gave rise
to the claim'.

At a minimum, it seems to me, this enlarged definition of 'litigation' includes separate proceedings that involve the same or related parties and arise from the same or a related cause of action (or "juridical source"). Proceedings that raise issues common to the initial action and share its essential purpose would in my view qualify as well."

Now, my friend said - Mr. Rancourt says, the champerty motion is over. And he's right. And the university was only a party to the champerty motion and he's right but the champerty motion was an interlocutory motion in this action that is before you now, and that action is by no means over. The trial is about to start. So, my first response to Mr. Rancourt is, as the Supreme Court of Canada has said, "litigation privilege remains until the action is over". The second point is if the champerty - if I'm not right in what I just said, at a minimum, I submit, the action - the champerty action and the action - sorry, the champerty motion and the action, which is before you are closely related proceedings. So, the Supreme Court of Canada said, so long as the litigation that gave rise to the privilege or for which the privilege exists, is closely related to ongoing litigation, then the litigation privilege proceeds. And Mr. - and thirdly, Mr. Rancourt says, if I understand his pleading in the matter

that Mr. Dearden and Mr. Rancourt made submissions about yesterday, Mr. Rancourt says that the issue for him, one of the issues in the libel action is whether the university was right to fund the litigation. He says that's an issue, whether the university acted properly in funding this libel action. That was the issue in the champerty motion. If Mr. Rancourt is right and that is an issue in this libel trial that's before you, then it has to be, in my submission, closely related to the champerty motion, 'cause it's the same issue and whether you go into this house by the front door or the back door, you end up in the same house. The champerty motion and the libel action are the same or closely related. And if Mr. Rancourt is wrong and the motivation behind or the propriety of the university agreeing to pay for the plaintiff's legal fees is not the issue in the libel action, then there's no relevance whatsoever to these - to the invoices. And I would make a further submission, which is there is no way that the invoices are relevant in any way, shape, or form, no matter what the issues in the libel action are. How is it relevant, how would the jury be assisted in determining any fact at issue in this libel action by seeing the plaintiff's lawyer's bills? I've never heard of such a thing, that the bills of one party to an action have to be produced to the other party with the potential to being issued - entered into evidence in the action.

There's simply no relevance. So, in my submission, on the clear language of *Blank*, these invoices, as we see from the affidavit of Julie Sukkot, were created for the purpose of assisting in the litigation. The finding of this court in the champerty motion - and we'll get into that in a second - was that the university's decision to assist the plaintiff by paying her legal fees was for the very purpose of assisting this litigation. That's why the university is doing it. So, the invoice, which has to be sent to the university so they can pay those bills, must have been created to assist in that litigation and that fits the test perfectly. Now, Mr. Rancourt goes further and he says only parties to the litigation can claim litigation privilege and since my clients are not parties to this litigation, they can't raise the litigation privilege. And I have two answers to that. First of all, the University of Ottawa was a party to the champerty motion. They were an affected party, which took an active role and it is the University of Ottawa's privilege. Secondly, however, I submit that there is no reason why a non-party who is in possession of documents for which there - which are litigation privileged, cannot raise it. The non-party has to be able to raise the litigation privilege. If we go back to *Blank*, the *Blank* decision of the Supreme Court of Canada, at paragraph 28, Mr. Justice Sharpe's article, cited with approval,

"Litigation privilege, (on the other hand) applies to communications of a non-confidential nature between the solicitors and third parties..."

That's the fourth line in the quote in paragraph 28.

"Litigation privilege applies to communications of a non-confidential nature between the solicitor and third parties."

If it applies to those communications, they are, the communication is equally privileged in the hands of the sender, the solicitor, and the receiver, the third party. That document is litigation privileged. The reason the solicitor wrote to the third party was to assist in the prosecution of the litigation. That's why the privilege exists. Mr. Dearden's firm wrote, sent the invoices to the University of Ottawa to assist in the prosecution of the litigation and if Mr. Rancourt could not force Mr. Dearden to produce those documents, as he seems to be conceding he could not, then he could no more easily force the university, the recipient of those documents to produce them. Otherwise, the privilege would be - would have a hole so big you could drive a Mack truck through it. All that somebody wanting to get at a litigation privileged document would have to do is serve a summons on the recipient of the document. And consequently, in my submission,

5 there can be no doubt that all of the
documents in Schedule B meet the test. They
meet the - we have filed evidence, which
establishes that those documents all meet the
test. It does not matter that the litigation
is over. In any event, the invoices are for
the ongoing litigation, which is still
continuing. The trial is about to begin and
there's no suggestion that that litigation is
10 over. Finally, turning to Schedule C.

THE COURT: I just - maybe I didn't quite follow
you. You started by indicating that the only
conceded one was number seven?

MR. DOODY: Oh, that's right.

15 THE COURT: And then you put a lot of emphasis on
number eight. Is everything that you just said
to me applies to one to six? I didn't quite...

MR. DOODY: No. Number eight is different
because it was created by Mr. Dearden's firm...

20 THE COURT: Okay.

MR. DOODY: ...and sent to my client, the U of O.

THE COURT: So, what happens to one to six?

MR. DOODY: One to six? One to six, they simply,
Mr. - if I understand Mr. Rancourt correctly, he
25 says they're not covered by the litigation
privilege because they relate to the champerty
motion and that's over.

THE COURT: Okay. What...

MR. DOODY: As I understand it...

30 THE COURT: ...it's...

MR. DOODY: ...that's what he's saying.

THE COURT: ...just that you seem to be focusing all of your argument on eight to the exclusion of one to six, but all of your argument included those on one to six.

MR. DOODY: Yes.

THE COURT: Okay.

MR. DOODY: Yes, Your Honour.

THE COURT: I want to make sure...

MR. DOODY: That's right.

THE COURT: ...I follow you here.

MR. DOODY: Thank you.

THE COURT: All right.

MR. DOODY: And I want to make sure that you understand, too. If I could turn then to Schedule C, the documents that we say are irrelevant. And Mr. Rancourt, at page five of his factum, paragraphs 13 to 15 says essentially, two things. Number one, he says, in paragraph 13, "The defendant submits that a witness that is not a party to the action does not have standing to move to quash a summons to witness on the basis of relevance at trial." And he goes on in paragraph 14 to say, "The university has identified documents that are responsive to the summonses to witness and that it refuses to produce on the sole ground of relevance. As a non-party to the action, the university does not have standing to move to quash the summonses on the ground of relevance at trial." Now, Mr. Rancourt cites no authority for that proposition and, in my submission, it can't - that cannot be and is not the law. A summons to witness is an

order of the court directed to my client. It tells them to bring documents to court under penalty of contempt. The only documents that the Court can properly order to be produced are documents that are relevant to the lawsuit.

THE COURT: But sometimes you won't know that for a long time. Even before the judge is into the trial and...

MR. DOODY: Oh, absolutely.

THE COURT: ...knows everything. So, that's - anyway. All right.

MR. DOODY: Yeah, absolutely, I agree.

THE COURT: It sounds - what he says sounds right at first blush.

MR. DOODY: At first blush, but if you think about it, it can't be the law that nobody served with a summons to witness could bring a motion to quash...

THE COURT: No. No, no.

MR. DOODY: ...on the grounds...

THE COURT: No, no.

MR. DOODY: ...of relevance. If there was a common assault trial downstairs and somebody served me with a summons to witness requiring me to bring my income tax returns, I think I'd have...

THE COURT: Yes, yes.

MR. DOODY: ...I'd have standing...

THE COURT: If it's clear like this, yes.

MR. DOODY: Right.

THE COURT: Yeah, sure.

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MR. DOODY: So, that simple proposition can't be the law. If you turn though, to the next page, and - just before I turn the page. And Your Honour of course, is quite right; sometimes you need to be into the trial before you know whether or not a document is relevant. So, if you look at the way this ordinarily unfolds where someone has been served with a summons to witness, he doesn't have to produce the documents before the trial. He gets in the witness box; he has them in front of him. The part - the person's...

THE COURT: Is that what a subpoena calls for?

MR. DOODY: Bring to trial.

THE COURT: Coming and appearing at the trial with the documents?

MR. DOODY: Yes.

THE COURT: Is there such a thing as a subpoena to produce the documents to the - is...

MR. DOODY: There is. There is and I deal with this in my...

THE COURT: But that's not the fact that was served, is that...

MR. DOODY: That's what - yeah, and it's - and that is actually quite a different beast. Under rule 39.0 - no, 30, 30.10, you can get discovery from a non-party. And I deal with this in my factum at paragraphs...

THE COURT: Only under discovery, you're saying?

MR. DOODY: Yes. You could get documents produced from a non-party, but you have to meet the test and it's not an easy test.

THE COURT: No. No, no, no.

MR. DOODY: You balance the inconvenience to the non-party and the party has to show that they have a need for it. But in an ordinary summons, the situation is you serve the summons and the witness brings the documents to the trial.

Now...

THE COURT: Now, what happens then?

MR. DOODY: Well, in many cases, what happens is the witness agrees, okay, here are the documents and he gives them.

THE COURT: Yes. Yes.

MR. DOODY: And we've done that.

THE COURT: But that's not our situation.

MR. DOODY: Well, no, it is actually, 'cause...

THE COURT: Okay.

MR. DOODY: ...I've given a lot of documents to Mr. Rancourt.

THE COURT: Yes.

MR. DOODY: I gave him a lot of documents on Friday. We're only here discussing the particular documents that I say are not relevant.

THE COURT: Mm-hmm.

MR. DOODY: So, the documents that I - my clients have conceded are relevant, he has. So, the way it works, in my experience is, the witness gets in the box; the party who summonsed him says, "Can you give me document A, B, C?" And the witness says to the court, "Do I have to? Is it relevant?" And often the party on the other side will object on the basis of relevance and the Court will make a determination. If it's

relevant, he hands it over.

THE COURT: Okay.

MR. DOODY: If he doesn't, if it's not...

THE COURT: So, that's what I mean. I mean, you
can't simply refuse. Yeah, the Court will have
to decide whether it's relevant.

MR. DOODY: That's right.

THE COURT: But can we do this in advance?

MR. DOODY: And that's really the question and,
in my submission, you can in this case. And it -
and I'll explain why, if I may? If you turn to
my Motion Record and take the affidavit of Ms.
Sukkot at Tab 2, page 15, the very last
paragraph. Oops. Ms. Sukkot swears this, "I
have reviewed all of the documents described in
Schedule C to the Notice of Motion attached
hereto as Exhibit O. None of those documents
relate to the circumstances surrounding the
Student Appeal Centre report issued in November
2008 or Professor St. Lewis' evaluation of that
report released on November 25, 2008. Each of
those documents relate to some other matter.
Some of them relate to financial support by the
University for Professor St. Lewis' legal fees in
respect of this litigation. Documentation
related to the Roots to Freedom Scholarship
Fund..." Stopping there. Your Honour, may not
know what the Roots to Freedom Scholarship Fund
is but in the Statement of Claim...

THE COURT: Yes, I have an idea.

MR. DOODY: ...there's reference to that.

THE COURT: I have a good idea from reading the pleadings.

MR. DOODY: Okay. "...or documents as described in paragraphs 13, 15, 16, 17, 18, 19, 20, 22, and 23 of the summons to Allan Rock dated February 20 or in paragraphs 3 through 7 of the summons directed to Bruce Feldthusen." So, that's the evidence as to what they relate to and it's clear from what Mr. Rancourt is submitting in his factum that what he wants to do, he wants to get these documents into evidence because he wants to prove that the funding of the university is improper and if you look at his factum at page six, at the top of the page, paragraph 15, he writes, "In the alternative, the Schedule C documents are relevant to the action as follows: the university funding of the plaintiff's litigation is relevant irrespective of whether the funding is improper because the defendant pleaded that the funding itself is an abuse of process offending the *Charter* principle of freedom of expression." Stop there. If the funding itself is an abuse of process, it's improper. Paragraph 17, he says, "The quantum of the funding is also relevant irrespective of whether the funding is improper because a large quantum of funding creates a large imbalance between the *Charter* principle of freedom of expression and protecting reputation." If the quantum of the funding creates a large imbalance, it's improper. Eighteen, Mr. Rancourt writes,

5 "Improper motive for the university's funding is
also part of the defendant's pleaded strands of
abuse of process that offend the *Charter*
principle of freedom of expression." And he -
that's an admission, Your Honour, that he wants
these documents because he wants to use them to
show that the motive of the university in funding
the litigation is improper and that's - that very
issue, is what the University of Ottawa and the
10 plaintiff and the courts of this province, right
up to the Supreme Court of Canada, twice, dealt
with between January 2011 and March of this year
and the - this Court has decided and all Courts
of Appeal have refused to set aside that decision
and the decision was that the university's motive
15 in paying the plaintiff's legal fees was a proper
one. And that's what my - Mr. Rancourt wants -
says in his factum, he wants these documents in
for and that's what they can't be used for. And
if I could just take you very briefly, Your
20 Honour, I'm almost finished - to Justice Smith's
decision at Tab H of the Motion Record, at page
61. At paragraph 87, this is Justice Smith's
decision dismissing the - Mr. Rancourt's motion
which sought, don't forget, to have the action
25 dismissed because it was an abuse of process.
Justice Smith wrote,

30 "Rancourt speculates and alleges that
Allan Rock, as president of the
university, had an improper motive for
funding St. Lewis' libel action against
him. He alleges that the university

agreed to fund her defamation action in order to stigmatize and silence him after the university dismissed him from his full tenured professorship on April 1, 2009.

There can be no maintenance if the university had a legitimate reason or justification for assisting the litigant.

The evidence is uncontradicted from

President Rock, Mr. Giroux, Dean

Feldthusen and St. Lewis that the

university's reasons for assisting St.

Lewis by paying her legal fees was to

defend her reputation. The reasons were

set out in the letter from its counsel,

David Scott, namely, because her

reputation was attacked during the course

of her employment by the university and

also because the university felt that it

had a moral obligation to assist her to

defend her reputation in these special

circumstances from a racist attack."

And then if you turn the page, Your Honour, to paragraph 93, Justice Smith sets out his conclusion in the last sentence of paragraph 93.

"I find that the university had a

legitimate reason for assisting St. Lewis

and there is no evidence that the

university agreed to fund St. Lewis' libel

action for improper motive or based upon

an improper motive - for an improper

purpose or based on an improper motive."

5 That finding of fact was at the heart of the
decision of Justice Smith and it was adopted. It
was accepted, rather, by the Court of Appeal and
the endorsement is at tab J of the Motion Record,
at page 91 of the Motion Record in paragraph -
third line on page 91, the Court of Appeal wrote,

10 "We see no error of law on the part of the
motion judge in concluding on the ample
evidence before him that the respondent's
employer's decision to fund the litigation
did not amount to maintenance or
champerty. Nor did the respondent's
unilateral decision to donate a portion of
any punitive damages she might receive to
15 a scholarship at the employer university
make out maintenance or champerty.
Moreover, the underlying findings of fact
- one of which was no improper motive -
made by the motion judge were reasonably
20 supported by the record."

25 That issue of fact, that finding of fact cannot
be re-litigated even if it was an interlock -
even though it was an interlocutory decision.
And the Supreme Court of Canada in the Danyluk v.
Ainsworth case, at Tab 12 of my authorities, a
2001 decision, set out the rationale behind
saying that these cannot be - these kinds of
findings of fact cannot be re-litigated. And at
page eight of the decision, paragraph 18, the
30 court wrote,

"The law rightly seeks a finality to

litigation. To advance that objective, it requires litigants to put their best foot forward to establish the truth of their allegations when first called upon to do so. A litigant, to use the vernacular, is only entitled to one bite at the cherry. The appellant chose the ESA as her forum. She lost."

And I stop there. I, in my submission, Mr. Rancourt chose the champerty motion as his forum. He lost. The court goes on to say,

"An issue, once decided, should not generally be re-litigated to the benefit of the losing party and the harassment of the winner. A person should only be vexed once in the same cause. Duplicative litigation, potential inconsistent results, undue costs, and inconclusive proceedings are to be avoided."

And Your Honour, it makes no difference that it was interlocutory and that was decided many times but recently, at Tab 15 in the case of *Holly v. the North Shore Mercantile Corp.*, a decision of the Court of Appeal. And in this case, the - there was an issue about the - interpreting an escrow agreement and there was an application brought, not an action, but an application brought to interpret the escrow agreement. The application judge held that the escrow agreement was ambiguous and ordered the trial of an issue as to what the escrow agreement meant. At -

5 after the trial of the issue, the judge who heard
the trial of the issue ruled that the escrow
agreement was not ambiguous and the Court of
Appeal said that's exactly what she couldn't do.
The - in the interlocutory decision, the
application judge had said it's ambiguous. So,
you can't say it's not ambiguous. And at page
six of the decision, Justice MacFarland,
10 paragraph 25, the court writes at the bottom of
the page,

15 "In my view, absent an appeal, the
application judge's finding that the
escrow agreement was ambiguous is final
and conclusive on that point. It was not
open to the trial judge to revisit the
issue."

He then cites *TD Bank v. Lee Instruments* and
refers to that and in the course, the next page -
I guess I have to start at the bottom - he says,

20 "In that, the *Lee* case, defence counsel
moved before Justice Spence in the course
of the litigation for production of a
certain memorandum. Justice Spence
refused to grant the order on the grounds
25 the memorandum had been prepared in
contemplation of litigation and as such,
was properly subject to the claim of
litigation privilege. Later in the course
of that same litigation, counsel for one
30 of the defendants moved before the trial
judge, Justice Winkler, to ask in cross-

5 examination seven questions of the witness
who had prepared the memorandum. The
purpose and objective of the question was,
as the trial judge articulated at
paragraph 1, to provide a basis for a
motion to require production of the
memorandum at trial. Counsel for the
plaintiff objected to the questions on the
10 ground that they went to the root of the
claim for privilege, the propriety of
which had been finally determined by
Justice Spence. He argued the defendant
was bound by that ruling and was
prohibited by the doctrine of issue
15 estoppel from relitigating that issue."

And the court went on to say that that was
correct. In this case, the court has finally
decided that after much litigation and enormous
cost, that the university's motives in funding
20 Professor St. Lewis' litigation were proper. Mr.
Rancourt wants to ask this Court and this jury to
make a finding whether it's the same legal
argument or a different legal argument, to make a
finding though, that that factual finding was
25 wrong and he wants this Court to conclude that
the university's motives in funding the
litigation were bad. As he puts it, it's
litigation by proxy. My client, the university,
if Mr. Rancourt is right, is the puppet holder
30 and Professor St. Lewis is the puppet. Some
puppet, I might say parenthetically. But that

Submissions by Mr. Doody
Reply submissions by Mr. Dearden

5 issue has been finally decided and he can't
revisit it. And so therefore, since it's clear
from an examination of the evidence and
particularly Mr. Rancourt's factum, that the only
reason he wants to get at these documents that
are in Schedule C is to revisit that issue of
whether the university was being good or bad when
they decided to fund the litigation. That
10 issue's been decided and therefore, they're not
relevant. Those are my submissions, Your Honour.
THE COURT: Thank you. We'll take 15 minutes.

R E C E S S

15 U P O N R E S U M I N G :

MR. DEARDEN: Your Honour.

THE COURT: Yes, you want to say something about
this one?

MR. DEARDEN: Very briefly.

20 REPLY SUBMISSIONS BY MR. DEARDEN:

MR. DEARDEN: And just, it won't surprise you,
item number eight of Schedule B, which is the
Gowling's invoices.

25 THE COURT: Yes.

MR. DREARDON: I'll make quick points of
argument, Your Honour, on those invoices being
subject to solicitor-client privilege, litigation
privilege and not being relevant, at all, to any
30 issue in the libel action. Firstly, solicitor-
client privilege, Your Honour, the details of the

lawyer's invoice are central to the solicitor-client relationship. The right of confidentiality of communications between Professor St. Lewis and me and other lawyers at Gowling's is fundamental, civil and legal right, which cannot be lightly abrogated and the details of my work on this case, that is against the defendant, Mr. Rancourt, cannot be disclosed because they are subject to solicitor-client privilege. The dockets will indicate what work has been done and I should say as an aside, although Mr. Rancourt didn't raise this as an issue, waiver, you know, was there a waiver because the invoices went to - from Professor St. Lewis to the University of Ottawa to be paid? But waiver only happens, Your Honour, waiver of solicitor-client privilege, if the client has done it deliberately and knowingly - deliberately and knowingly and not inadvertently. And it's undisputed that the sole purpose of providing the Gowling's invoices to the University of Ottawa is to get them paid. Professor St. Lewis had no choice but to submit those invoices to U of O to get them paid. And you know from yesterday's arguments, Your Honour, that an employer, it's perfectly legitimate for an employer to pay the legal fees of an employee's libel action and that's the *Hill v. Church of Scientology* decision. So, it would be absurd that an employee would lose their solicitor-client privilege simply because the employer is paying

the employee's legal costs. It just can't be. It just can't be. And that's what happened here. That's all that happened here. On litigation privilege, Your Honour, Mr. Doody took you through the *Blank* case and I'm not gonna repeat it, but on the theme of, you know, the zone of privacy, my point's very simple. If you - if the Gowling's invoices rendered the past three years in this litigation were disclosed to Mr. Rancourt, he would know what work I've been doing on behalf of my client and that would be severely prejudicial, to allow the defendant to have access to those invoices. And lastly, Your Honour, who paid my legal fees is not relevant and you recall the argument yesterday, where I relied on *Hill v. Church of Scientology*, Justice Carruthers' decision at paragraph 12 and then Justice Smith's decision in this case at paragraph 16, which to save you hunting for them in the - to save you hunting for them in the litigation by proxy materials, Your Honour, I'm providing you another copy of the same thing. It's just not relevant in a libel action - Mr. Rancourt - as to who paid the legal fees. And then, so that - those are my three very brief submissions, Your Honour, on the bundle of Gowling's invoices found at item eight of Schedule B. And the last point I'll make, unrelated to that, I reviewed Mr. Rancourt's factum on this motion and I do note that at paragraph 16 through 19, those submissions are

all hooked to the *Charter*. So, if Your Honour decides that there is no litigation by proxy, contrary to the *Charter* defence regarding what was argued yesterday, then Mr. Rancourt's submissions at paragraphs 16 to 19 become completely irrelevant, inapplicable. Subject to what Your Honour has to...

THE COURT: Thank you...

MR. DEARDEN: ...say, that's my submissions.

THE COURT: ...sir.

MR. DREARDON: Thanks.

LE TRIBUNAL : Oui, monsieur Rancourt. Je vais vous entendre.

DENIS RANCOURT : Oui, merci.

INTERPRETER: Yes, Mr. Rancourt, I will hear you. Thank you.

REPRÉSENTATIONS PAR DENIS RANCOURT :

DENIS RANCOURT : Okay. Alors, Monsieur le juge...

INTERPRETER: So, Your Honour...

DENIS RANCOURT: ...l'Université d'Ottawa vient d'argumenter...

INTERPRETER: ...the University of Ottawa...

DENIS RANCOURT : ...aujourd'hui...

INTERPRETER: ...just argued today...

DENIS RANCOURT : ...qu'elle est trop loin...

INTERPRETER: ...that it's...

DENIS RANCOURT : ...de cette action...

INTERPRETER: ...too...

DENIS RANCOURT : ...pour qu'on considère ses

actions...

INTERPRETER: ...far for...

DENIS RANCOURT : ...comme étant inappropriées...

INTERPRETER: ...from this...

DENIS RANCOURT : ...mais elle est assez
proche...

INTERPRETER: ...case to consider...

DENIS RANCOURT : ...de cette action...

INTERPRETER: ...their actions...

DENIS RANCOURT : ...pour qu'on la traite comme
un parti...

INTERPRETER: ...from being inappropriate...

DENIS RANCOURT : ...pour qu'elle puisse...

INTERPRETER: ...but close enough...

DENIS RANCOURT : ...niquer...

INTERPRETER: ...so that we can...

DENIS RANCOURT : ...des évidences.

INTERPRETER: ...treat them as a party...

DENIS RANCOURT : Elle - l'Université d'Ottawa...

INTERPRETER: ...so that they can...

DENIS RANCOURT : ...veut...

INTERPRETER: ...deny...

DENIS RANCOURT : ...avoir...

INTERPRETER: ...evidence. So...

DENIS RANCOURT : ...les deux mondes en même
temps.

INTERPRETER: ...Ottawa U wants...

DENIS RANCOURT : Elle est...

INTERPRETER: ...to have...

DENIS RANCOURT : ...assez loin...

INTERPRETER: ...the best of both worlds.

DENIS RANCOURT : ...que y'a pas de question...

INTERPRETER: It is...

DENIS RANCOURT : ...que c'est une action
indépendante...

INTERPRETER: ...so...

DENIS RANCOURT : ...par une personne
indépendante...

INTERPRETER: ...far away...

DENIS RANCOURT : ...qui fait ça...

INTERPRETER: ...that it's...

DENIS RANCOURT : ...uniquement pour ses
raisons...

INTERPRETER: ...no...

DENIS RANCOURT : ...à elle et que y'a rien
d'injuste...

INTERPRETER: ...doubt that it's an
independent...

DENIS RANCOURT : ...là-dedans.

INTERPRETER: ...party doing that.

DENIS RANCOURT : Elle est assez loin pour ça...

INTERPRETER: There's nothing...

DENIS RANCOURT : ...mais elle serait assez...

INTERPRETER: ...unfair.

DENIS RANCOURT : ...proche pour...

INTERPRETER: It's far enough removed...

DENIS RANCOURT : ...être traité comme un
parti...

INTERPRETER: ...but close enough...

DENIS RANCOURT : ...pour pouvoir...

INTERPRETER: ...to be treated as...

DENIS RANCOURT : ...écraser...

INTERPRETER: ...a party to be...

DENIS RANCOURT : ...une demande...

INTERPRETER: ...able to...

DENIS RANCOURT : ...d'évidence des...

INTERPRETER: ...quash...

DENIS RANCOURT : ...témoins. Et ça, je trouve
ça...

INTERPRETER: ...a request for...

DENIS RANCOURT : ...une assez intéressante...

INTERPRETER: ...evidence.

DENIS RANCOURT : ...contradiction.

INTERPRETER: I find...

DENIS RANCOURT : Et ça montre...

INTERPRETER: ...that...

DENIS RANCOURT : ...vraiment...

INTERPRETER: ...rather interesting...

DENIS RANCOURT : ...le jeu...

INTERPRETER: ...contradiction. It really...

DENIS RANCOURT : ...qui a été joué...

INTERPRETER: ...shows...

DENIS RANCOURT : ...dans - au...

INTERPRETER: ...the game...

DENIS RANCOURT : ...con - au long de toute cette
action...

INTERPRETER: ...that has been...

DENIS RANCOURT : ...où l'Université d'Ottawa...

INTERPRETER: ...played...

DENIS RANCOURT : ...est...

INTERPRETER: ...all along...

DENIS RANCOURT : ...complètement...

INTERPRETER: ...this case...

DENIS RANCOURT : ...impliquée dans cette affaire...

INTERPRETER: ...where Ottawa U is completely...

DENIS RANCOURT : ...mais veux se protéger...

INTERPRETER: ...involved in this...

DENIS RANCOURT : ...de montrer...

INTERPRETER: ...matter but wants to...

DENIS RANCOURT : ...qu'elle est complètement impliquée...

INTERPRETER: ...protect...

DENIS RANCOURT : ...dans cette affaire.

INTERPRETER: ...itself to show that it's not...

DENIS RANCOURT : L'Université d'Ottawa...

INTERPRETER: ...involved completely.

DENIS RANCOURT : ...connait...

INTERPRETER: Ottawa U...

DENIS RANCOURT : ...ce qu'il y a...

INTERPRETER: ...knows...

DENIS RANCOURT : ...dans mon *Statement of Defence*...

INTERPRETER: ...what...

DENIS RANCOURT : ...ce que j'ai plaidé...

INTERPRETER: ...is...

DENIS RANCOURT : ...depuis plus de...

INTERPRETER: ...comprised in my *Statement of Defence*...

DENIS RANCOURT : ...trois ans.

INTERPRETER: I've been pleading that...

DENIS RANCOURT : Elle a eu...

INTERPRETER: ...for over three years.

DENIS RANCOURT : ...amplement l'occasion...

INTERPRETER: It has had more...

DENIS RANCOURT : ...de se faire ajouter...

INTERPRETER: ...than ample...

DENIS RANCOURT : ...comme partie si elle
voulait.

INTERPRETER: ...opportunity to...

DENIS RANCOURT : Elle a choisi de ne pas...

INTERPRETER: ...be added as a party...

DENIS RANCOURT : ...le faire.

INTERPRETER: ...if they wanted but they chose
not to.

DENIS RANCOURT : Et elle a choisi...

INTERPRETER: And...

DENIS RANCOURT : ...pour ses raisons
stratégiques...

INTERPRETER: ...the university...

DENIS RANCOURT : ...à elle de ne pas le faire.

INTERPRETER: ...chose...

DENIS RANCOURT : Elle a choisi...

INTERPRETER: ...to do so for its own...

DENIS RANCOURT : ...d'être exclue...

INTERPRETER: ...strategic reasons...

DENIS RANCOURT : ...en tant que partie...

INTERPRETER: ...to not do it. It chose...

DENIS RANCOURT : ...dans cette action.

INTERPRETER: ...to be excluded as a party...

DENIS RANCOURT : Elle doit maintenant vivre...

INTERPRETER: ...in this matter.

DENIS RANCOURT : ...avec ce choix.

INTERPRETER: So, now, it has to live with its
choice.

DENIS RANCOURT : Ça veut dire qu'elle n'est pas un parti...

INTERPRETER: So, that means...

DENIS RANCOURT : ...à l'action, qu'elle ne peut pas venir...

INTERPRETER: ...that it's not a party to the matter.

DENIS RANCOURT : ...dire...

INTERPRETER: It cannot come back and say...

DENIS RANCOURT : ...où dans les plaidoires...

INTERPRETER: ...or where...

DENIS RANCOURT : ...on peut enlever des choses, etcétera, quelle évidence est pertinente...

INTERPRETER: ...we can stay...

DENIS RANCOURT : ...comme un parti le ferait.

INTERPRETER: ...where we can remove certain parts or like a party could try to do. It can't. It cannot remove parts of...

DENIS RANCOURT : Monsieur Doody a...

INTERPRETER: ...the pleadings.

DENIS RANCOURT : ...suggéré...

INTERPRETER: Mr. Doody...

DENIS RANCOURT : ...que ça serait pas raisonnable de dire...

INTERPRETER: ...suggested that it wouldn't...

DENIS RANCOURT : ...qu'un non-parti...

INTERPRETER: ...be reasonable that - to say that a non-party...

DENIS RANCOURT : ...ne peut pas se protéger contre...

INTERPRETER: ...cannot protect itself against...

DENIS RANCOURT : ...une demande comme ça un
summons.

INTERPRETER: ...like such a demand...

DENIS RANCOURT : Je propose que...

INTERPRETER: ...a summons.

DENIS RANCOURT : ...ce qu'il avance...

INTERPRETER: Well, I suggest that he's...

DENIS RANCOURT : ...mène à une absurdité...

INTERPRETER: ...putting forward leads...

DENIS RANCOURT : ...comme suit...

INTERPRETER: ...to an absurd...

DENIS RANCOURT : ...je pourrais être une
personne qui a des documents intéressants...

INTERPRETER: ...fact. Here's what I mean. I
could be...

DENIS RANCOURT : ...et ces documents-là...

INTERPRETER: ...a person who has interesting
documents and those...

DENIS RANCOURT : ...ils sont en litige...

INTERPRETER: ...documents are...

DENIS RANCOURT : ...dans un autre litige, séparé
de moi.

INTERPRETER: ...part of another...

DENIS RANCOURT : Quelqu'un me fait une
demande...

INTERPRETER: ...legal case separate from mine.

DENIS RANCOURT : ...et je dis : « Non, non, non.
Ces documents sont impliqués...

INTERPRETER: Somebody makes a request...

DENIS RANCOURT : ...dans un autre litige.

INTERPRETER: ...to me and I say, "No, no, no.

DENIS RANCOURT : Donc, ils sont *litigation privileged*. »

INTERPRETER: Those documents are part of another...

DENIS RANCOURT : Vous voyez?

INTERPRETER: ...legal case. So, they're...

DENIS RANCOURT : Si y'a pas une connexion intime...

INTERPRETER: ...litigation privilege. You see...

DENIS RANCOURT : ...la - un non-parti...

INTERPRETER: ...if there's not an intimate connection...

DENIS RANCOURT : ...n'a aucune...

INTERPRETER: ...another party has no protection...

DENIS RANCOURT : ...protection de *litigation privilege*, aucune.

INTERPRETER: ...regarding litigation privilege. None.

DENIS RANCOURT : Il faut qu'il y ait...

INTERPRETER: There has to be...

DENIS RANCOURT : ...une connexion intime essentiellement...

INTERPRETER: ...an intimate connection...

DENIS RANCOURT : ...de partis à la cause.

INTERPRETER: ...essentially between...

DENIS RANCOURT : Sinon...

INTERPRETER: ...parties to...

DENIS RANCOURT : ...c'est pour ça que ça s'appelle...

INTERPRETER: ...the case. If not...

DENIS RANCOURT : ...*litigation privilege*.

INTERPRETER: ...that's why it's called
litigation privilege.

DENIS RANCOURT : Ensuite...

INTERPRETER: Then...

DENIS RANCOURT : ...le problème, si monsieur
Doody...

INTERPRETER: ...the issue, if Mr. Doody...

DENIS RANCOURT : ...obtient ce qu'il veut...

INTERPRETER: ...gets what he's looking for...

DENIS RANCOURT : ...c'est que...

INTERPRETER: ...it's that...

DENIS RANCOURT : ...j'aurais jamais - je
verrais...

INTERPRETER: ...I would never...

DENIS RANCOURT : ...pas les évidences.

INTERPRETER: ...I won't see the evidence.

DENIS RANCOURT : Ils vont être exclus...

INTERPRETER: They're going to be excluded...

DENIS RANCOURT : ...et j'aurai jamais la
chance...

INTERPRETER: ...and never will I...

DENIS RANCOURT : ...de demander au témoin...

INTERPRETER: ...have the opportunity...

DENIS RANCOURT : ...de le questionner...

INTERPRETER: ...to ask the witness...

DENIS RANCOURT : ...par rapport à ce
recherche...

INTERPRETER: ...to question him or her...

DENIS RANCOURT : ...pour obtenir les

documents...

INTERPRETER: ...regarding the...

DENIS RANCOURT : ...que j'ai demandés.

INTERPRETER: ...research made to obtain...

DENIS RANCOURT : Est-ce qu'ils sont complets?

INTERPRETER: ...the documents...

DENIS RANCOURT : Comment est-ce que...

INTERPRETER: ...I wanted.

DENIS RANCOURT : Comment est-ce que...

INTERPRETER: Are they complete?

DENIS RANCOURT : ...vous les avez obtenus?

INTERPRETER: How did...

DENIS RANCOURT : D'où viennent-ils?

INTERPRETER: ...you get them? What is the...

DENIS RANCOURT : Qui vous les a donnés?

INTERPRETER: ...source of these? Who gave them...

DENIS RANCOURT : Aucune...

INTERPRETER: ...to you?

DENIS RANCOURT : ...de ces questions-là...

INTERPRETER: None of these questions...

DENIS RANCOURT : ...je dois - je vais pouvoir les poser...

INTERPRETER: ...will I be able to ask...

DENIS RANCOURT : ...au témoin...

INTERPRETER: ...of the witness...

DENIS RANCOURT : ...parce que les documents...

INTERPRETER: Why? Because...

DENIS RANCOURT : ...seraient bloqués.

INTERPRETER: ...the documents would be...

DENIS RANCOURT : Donc, je n'ai pas eu...

INTERPRETER: ...blocked. So...

DENIS RANCOURT : ...la possibilité...

INTERPRETER: ...I wasn't given the
opportunity...

DENIS RANCOURT : ...d'examiner en contre-
examination...

INTERPRETER: ...the possibility...

DENIS RANCOURT : ...l'affidavit...

INTERPRETER: ...to go...

DENIS RANCOURT : ...qui a été mis dans cette
motion...

INTERPRETER: ...in cross-examination...

DENIS RANCOURT : ...parce que...

INTERPRETER: ...this affidavit...

DENIS RANCOURT : ...le temps le permet...

INTERPRETER: ...that was...

DENIS RANCOURT : ...absolument pas.

INTERPRETER: ...put in this motion because...

DENIS RANCOURT : Y'a aucune question.

INTERPRETER: ...time won't allow. There's no...

DENIS RANCOURT : Je suis contraint...

INTERPRETER: ...question about it.

DENIS RANCOURT : ...par les règles de la cour...

INTERPRETER: I have to go...

DENIS RANCOURT : ...de me présenter...

INTERPRETER: ...according...

DENIS RANCOURT : ...et de le faire...

INTERPRETER: ...to the rules of the...

DENIS RANCOURT : ...même dans...

INTERPRETER: ...procedure to be here...

DENIS RANCOURT : ...dans une période...

INTERPRETER: ...to do so...

DENIS RANCOURT : ...où j'ai absolument pas le temps de faire ceci.

INTERPRETER: ...within a period...

DENIS RANCOURT : Donc, je n'ai pas la possibilité...

INTERPRETER: ...that I absolutely have no time to do so.

DENIS RANCOURT : ...de passer en contre-examination...

INTERPRETER: So, I have no...

DENIS RANCOURT : ...l'affidavit...

INTERPRETER: ...time to go...

DENIS RANCOURT : ...de savoir si...

INTERPRETER: ...and cross-examine...

DENIS RANCOURT : ...les recherches...

INTERPRETER: ...on the affidavit to find out...

DENIS RANCOURT : ...ont été bien faits.

INTERPRETER: ...if the research...

DENIS RANCOURT : L'affidavit ne dit rien...

INTERPRETER: ...was well done.

DENIS RANCOURT : ...à propos des méthodes de recherche...

INTERPRETER: The affidavit tells me nothing...

DENIS RANCOURT : ...ne dit rien si les recherches...

INTERPRETER: ...about the method of research.

DENIS RANCOURT : ...ont été - par qui les...

INTERPRETER: Tells me nothing...

DENIS RANCOURT : ...recherches ont été faits...

INTERPRETER: ...about who...

DENIS RANCOURT : ...comment elles ont été faits...

INTERPRETER: ...made the research.

DENIS RANCOURT : ...rien de ça.

INTERPRETER: How they were...

DENIS RANCOURT : Et donc, je serais...

INTERPRETER: ...done. None of that.

DENIS RANCOURT : ...bloqué de toute cette...

INTERPRETER: So, I would be...

DENIS RANCOURT : ...possibilité de tester l'évidence...

INTERPRETER: ...blocked from any possibility of testing...

DENIS RANCOURT : ...au préalable...

INTERPRETER: ...putting the evidence to test...

DENIS RANCOURT : ...avant le procès.

INTERPRETER: ...ahead of...

DENIS RANCOURT : Bien avant que les témoins...

INTERPRETER: ...the...

DENIS RANCOURT : ...se présentent, c'est à dire.

INTERPRETER: ...trial, before the...

DENIS RANCOURT : Donc, là, je trouve que...

INTERPRETER: ...witnesses...

DENIS RANCOURT : ...y'a un manque sérieux.

INTERPRETER: ...attend. Okay. So, I...

DENIS RANCOURT : Et un autre point que monsieur Doody a fait...

INTERPRETER: ...bring the fact that there's a serious issue...

DENIS RANCOURT : ...il a...

INTERPRETER: ...here.

DENIS RANCOURT : ...fait un lien entre...

INTERPRETER: Another thing Mr. Doody did, he established...

DENIS RANCOURT : ...l'abus de processus...

INTERPRETER: ...a link between...

DENIS RANCOURT : ...qui est la maintenance et la champartie...

INTERPRETER: ...the abuse of process, which is...

DENIS RANCOURT : ...et l'abus de processus...

INTERPRETER: ...the one I...

DENIS RANCOURT : ...qui est celui que j'ai plaidé.

INTERPRETER: ...plead.

DENIS RANCOURT : C'est à dire...

INTERPRETER: That is...

DENIS RANCOURT : ...l'abus de processus qui choque...

INTERPRETER: ...the abuse of process...

DENIS RANCOURT : ...l'équilibre entre...

INTERPRETER: ...which...

DENIS RANCOURT : ...le principe...

INTERPRETER: ...throws off the...

DENIS RANCOURT : ...de la libre expression...

INTERPRETER: ...equilibrium...

DENIS RANCOURT : ...qui est dans la *Charte*...

INTERPRETER: ...between the principle of...

DENIS RANCOURT : ...et la protection de la réputation.

INTERPRETER: ...freedom of expression, which is...

DENIS RANCOURT : Toute action...

INTERPRETER: ...in the *Charter* as...

DENIS RANCOURT : ...en diffamation...

INTERPRETER: ...protection of...

DENIS RANCOURT : ...est basée sur...

INTERPRETER: ...reputation all...

DENIS RANCOURT : ...trouver cet équilibre-là.

INTERPRETER: ...any action in defamation...

DENIS RANCOURT : Dans beaucoup de cas, cet équilibre...

INTERPRETER: ...is based on finding that...

DENIS RANCOURT : ...est trouvé...

INTERPRETER: ...equilibrium.

DENIS RANCOURT : ...dans les défenses...

INTERPRETER: In a lot of cases...

DENIS RANCOURT : ...qui sont dans le *common law*.

INTERPRETER: ...that equilibrium is found in...

DENIS RANCOURT : Dans des circonstances...

INTERPRETER: ...the defence through...

DENIS RANCOURT : ...exceptionnelles...

INTERPRETER: ...common law.

DENIS RANCOURT : ...y'a un abus de processus...

INTERPRETER: In exceptional circumstances...

DENIS RANCOURT : ...qui...

INTERPRETER: ...there's an abuse of process, which...

DENIS RANCOURT : ...détruit cet équilibre.

INTERPRETER: ...which...

DENIS RANCOURT : C'est ce que j'ai plaidé.

INTERPRETER: ...destroys this...

DENIS RANCOURT : J'ai plaidé...

INTERPRETER: ...equilibrium.

DENIS RANCOURT : ...cet abus de processus-là.

INTERPRETER: That's what I pled.

DENIS RANCOURT : Je l'ai plaidé en...

INTERPRETER: I pled...

DENIS RANCOURT : ...trois branches.

INTERPRETER: ...that abuse of process. I said
it was...

DENIS RANCOURT : J'ai plaidé que...

INTERPRETER: ...three-prong...

DENIS RANCOURT : ...y'a un abus de processus...

INTERPRETER: ...approach. I pled that it was an
abuse of process...

DENIS RANCOURT : ...parce que il n'y a pas...

INTERPRETER: ...because...

DENIS RANCOURT : ...de dommages à la
réputation...

INTERPRETER: ...there's no...

DENIS RANCOURT : ...réelle...

INTERPRETER: ...real damage...

DENIS RANCOURT : ...vraie...

INTERPRETER: ...to the reputation, true...

DENIS RANCOURT : ...parce que il y a un
financement et c'est...

INTERPRETER: ...and there's...

DENIS RANCOURT : ...un abus de processus qui...

INTERPRETER: ...a financing here...

DENIS RANCOURT : ...choque la liberté...

INTERPRETER: ...and it's abuse of...

DENIS RANCOURT : ...d'expression sur...

INTERPRETER: ...process that...

DENIS RANCOURT : ...le principe de la *Charte* parce que...

INTERPRETER: ...throws off...

DENIS RANCOURT : ...il y a financement...

INTERPRETER: ...the equilibrium...

DENIS RANCOURT : ...donc ça créé un déséquilibre...

INTERPRETER: ...of financing...

DENIS RANCOURT : ...dans la possibilité de...

INTERPRETER: ...and...

DENIS RANCOURT : ...se défendre...

INTERPRETER: ...and freedom and of expression.

DENIS RANCOURT : ...et j'ai plaidé aussi...

INTERPRETER: This is...

DENIS RANCOURT : ...une troisième branche...

INTERPRETER: ...this equilibrium and possibility of defending...

DENIS RANCOURT : ...de cet - de...

INTERPRETER: ...of defence...

DENIS RANCOURT : ...de, de, de ma défense...

INTERPRETER: ...and the third prong...

DENIS RANCOURT : ...d'abus de processus...

INTERPRETER: ...of this abuse of process...

DENIS RANCOURT : ...qui est...

INTERPRETER: ...defence is...

DENIS RANCOURT : ...que la raison même...

INTERPRETER: ...that the...

DENIS RANCOURT : ...de ce financement...

INTERPRETER: ...reason itself...

DENIS RANCOURT : ...est impropre parce que...

INTERPRETER: ...for this financing...

DENIS RANCOURT : ...c'est pour me faire taire.
INTERPRETER: ...is improper because...
DENIS RANCOURT : C'est pour...
INTERPRETER: ...it's to silence me.
5 DENIS RANCOURT : ...m'intimider.
INTERPRETER: To intimidate...
DENIS RANCOURT : C'est pour...
INTERPRETER: ...me.
DENIS RANCOURT : ...des raisons autre que...
10 INTERPRETER: To - and it's for reasons...
DENIS RANCOURT : ...celles qui sont acceptées...
INTERPRETER: ...other than...
DENIS RANCOURT : ...en diffamation.
INTERPRETER: ...those that are acceptable...
15 DENIS RANCOURT : Donc, à ces trois branches...
INTERPRETER: ...in defamation. Those - so, it's
a three prong...
DENIS RANCOURT : ...de ma défense...
INTERPRETER: ...approach...
20 DENIS RANCOURT : ...d'abus de processus que j'ai
plaidé...
INTERPRETER: ...of my defence for abuse of
process...
DENIS RANCOURT : ...et il est important de...
25 INTERPRETER: ...that I pled...
DENIS RANCOURT : ...réaliser...
INTERPRETER: ...and it's important...
DENIS RANCOURT : ...que ces...
INTERPRETER: ...to realize that those three...
30 DENIS RANCOURT : ...trois branches-là, elles
sont pas individuelles. Elles sont ensembles

dans la même action.

INTERPRETER: ...prongs.

DENIS RANCOURT : Y'a des actions...

INTERPRETER: ...are not individual.

DENIS RANCOURT : ...où elles sont toutes seules.

INTERPRETER: They're together...

DENIS RANCOURT : Dans cette action...

INTERPRETER: ...in this action.

DENIS RANCOURT : ...elle est ensemble.

INTERPRETER: There are suits...

DENIS RANCOURT : Non seulement y'a pas
d'évidence...

INTERPRETER: ...cases where...

DENIS RANCOURT : ...de vrais dommages à la
réputation...

INTERPRETER: ...they're separate but in this
case...

DENIS RANCOURT : ...mais en plus...

INTERPRETER: ...they're together, no...

DENIS RANCOURT : ...on finance...

INTERPRETER: ...not only is there no...

DENIS RANCOURT : ...à coûts de...

INTERPRETER: ...real damage...

DENIS RANCOURT : ...centaine de milliers de
dollars...

INTERPRETER: ...of attacking...

DENIS RANCOURT : ...cette action pour...

INTERPRETER: ...the reputation but...

DENIS RANCOURT : ...pour...

INTERPRETER: ...hundreds of thousands...

DENIS RANCOURT : ...m'attaquer de cette façon.

INTERPRETER: ...of dollars that...

DENIS RANCOURT : Donc, y'a le financement...

INTERPRETER: ...were spent to...

DENIS RANCOURT : ...combiné avec un manque...

INTERPRETER: ...attack me. So, there's the financing...

DENIS RANCOURT : ...de dommages réels à...

INTERPRETER: ...combined with...

DENIS RANCOURT : ...à la réputation...

INTERPRETER: ...a lack of real damage...

DENIS RANCOURT : ...combiné avec...

INTERPRETER: ...to...

DENIS RANCOURT : ...le fait...

INTERPRETER: ...reputation...

DENIS RANCOURT : ...que l'université...

INTERPRETER: ...combined with the fact that...

DENIS RANCOURT : ...veut me faire taire et...

INTERPRETER: ...the university wants...

DENIS RANCOURT : ...fait ça pour...

INTERPRETER: ...to silence me...

DENIS RANCOURT : ...des raisons autres.

INTERPRETER: ...and is doing that...

DENIS RANCOURT : Tout ça...

INTERPRETER: ...for...

DENIS RANCOURT : ...ensemble...

INTERPRETER: ...other reasons.

DENIS RANCOURT : ...c'est ça ma défense...

INTERPRETER: All of that...

DENIS RANCOURT : ...de l'abus de processus.

INTERPRETER: ...combined...

DENIS RANCOURT : Ça n'a rien à voir avec...

INTERPRETER: ...that's my defence...

DENIS RANCOURT : ...le déli...

INTERPRETER: ...on abuse of process.

DENIS RANCOURT : ...de maintenance et de
champartie.

INTERPRETER: ...has nothing to do with...

DENIS RANCOURT : Le déli de...

INTERPRETER: ...the tort of...

DENIS RANCOURT : ...maintenance et de
champartie...

INTERPRETER: ...maintenance and champarty.

DENIS RANCOURT : ...est strictement...

INTERPRETER: That...

DENIS RANCOURT : ...délimité et...

INTERPRETER: ...tort is...

DENIS RANCOURT : ...ça ne parle que...

OTHER INTERPRETER : Strictly limited.

INTERPRETER: ...strictly limited...

DENIS RANCOURT : ...du motif...

INTERPRETER: ...and only talks about...

DENIS RANCOURT : ...propre ou impropre...

INTERPRETER: ...a ground that's...

DENIS RANCOURT : ...pour donner le
financement...

INTERPRETER: ...proper or improper...

DENIS RANCOURT : ...à un parti dans une cause.

INTERPRETER: ...to allow...

DENIS RANCOURT : Un non-parti qui donne...

INTERPRETER: ...financing to a party...

DENIS RANCOURT : ...du financement.

INTERPRETER: ...in...

DENIS RANCOURT : C'est ça...

INTERPRETER: ...in a case.

DENIS RANCOURT : C'est se délimite à ça...

INTERPRETER: It is limited to that...

DENIS RANCOURT : ...uniquement.

INTERPRETER: ...strictly that.

DENIS RANCOURT : Ce n'est pas une défense...

INTERPRETER: It is not...

DENIS RANCOURT : ...et ça ne touche...

INTERPRETER: ...a defence...

DENIS RANCOURT : ...aucunement à la *Charte*...

INTERPRETER: ...and it doesn't...

DENIS RANCOURT : ...et les principes de la
Charte.

INTERPRETER: ...touch the *Charter*...

DENIS RANCOURT : Ça n'a rien à voir.

INTERPRETER: ...principles.

DENIS RANCOURT : Donc, on ne peut pas...

INTERPRETER: It has nothing to do with that.

DENIS RANCOURT : ...faire un lien entre...

INTERPRETER: You cannot...

DENIS RANCOURT : ...l'abus de processus...

INTERPRETER: ...establish a link...

DENIS RANCOURT : ...qui est maintenant...

INTERPRETER: ...between abuse of...

DENIS RANCOURT : ...maintenance et champartie
d'un côté...

INTERPRETER: ...process...

DENIS RANCOURT : ...qui est rédigé...

INTERPRETER: ...which is champetry on one
side...

DENIS RANCOURT : ...par le *common law*...

INTERPRETER: ...which is written by...

DENIS RANCOURT : ...de la maintenance et de la
champartie...

INTERPRETER: ...the common law maintenance
and...

DENIS RANCOURT : ...très strictement...

INTERPRETER: ...champany...

DENIS RANCOURT : ...et l'abus de processus que
j'ai...

INTERPRETER: ...very strictly and...

DENIS RANCOURT : ...plaidé, moi, de mon côté...

INTERPRETER: ...the abuse of process that I
pled...

DENIS RANCOURT : ...dans l'action.

INTERPRETER: ...myself...

DENIS RANCOURT : Les deux sont...

INTERPRETER: ...in this case. They both...

DENIS RANCOURT : ...distincts...

INTERPRETER: ...are distinct.

DENIS RANCOURT : ...et monsieur...

INTERPRETER: Each one of them are distinct...

DENIS RANCOURT : ...Doody...

INTERPRETER: ...and Mr. Doody...

DENIS RANCOURT : ...a aussi fait mention...

INTERPRETER: ...also mentioned...

DENIS RANCOURT : ...en parlant de cette question
que les deux...

INTERPRETER: ...when he talked about...

DENIS RANCOURT : ...sont distincts.

INTERPRETER: ...this question of distinction...

DENIS RANCOURT : Monsieur Doody a fait mention...

INTERPRETER: ...between the two.

DENIS RANCOURT : ...que la, la, la motion de champartie...

INTERPRETER: Mr. Doody mentioned that...

DENIS RANCOURT : ...était...

INTERPRETER: ...the motion...

DENIS RANCOURT : ...simplement une motion...

INTERPRETER: ...of champetry was simply...

DENIS RANCOURT : ...interlocutoire...

INTERPRETER: ...an interlocutory...

DENIS RANCOURT : ...dans l'action.

INTERPRETER: ...motion.

DENIS RANCOURT : C'est une drôle de façon de le dire parce que en faite, c'était une motion...

INTERPRETER: It's a way of saying...

DENIS RANCOURT : ...qui pouvait mettre...

INTERPRETER: ...because it's a motion...

DENIS RANCOURT : ...fin à l'action.

INTERPRETER: ...that could've brought...

DENIS RANCOURT : La décision...

INTERPRETER: ...an end to the...

DENIS RANCOURT : ...dans cette motion-là...

INTERPRETER: ...case. The decision...

DENIS RANCOURT : ...était finale.

INTERPRETER: ...in that motion...

DENIS RANCOURT : J'avais un droit...

INTERPRETER: ...was final.

DENIS RANCOURT : ...d'appel...

INTERPRETER: I had...

DENIS RANCOURT : ...à la Cour d'appel...
INTERPRETER: ...a right...
DENIS RANCOURT : ...de l'Ontario...
INTERPRETER: ...of appeal...
5 DENIS RANCOURT : ...que j'ai utilisé.
INTERPRETER: ...to the Ontario Court of Appeal,
which I availed myself of...
DENIS RANCOURT : Et après la Cour d'appel de
l'Ontario...
10 INTERPRETER: ...and after the Court of Appeal...
DENIS RANCOURT : ...j'avais un droit...
INTERPRETER: ...of Ontario...
DENIS RANCOURT : ...de demander permission...
INTERPRETER: ...I had...
15 DENIS RANCOURT : ...pour aller en appel...
INTERPRETER: ...the right to ask...
DENIS RANCOURT : ...à la Cour suprême du Canada.
INTERPRETER: ...the right to go to the...
DENIS RANCOURT : C'était une...
20 INTERPRETER: ...Supreme Court...
DENIS RANCOURT : ...action...
INTERPRETER: ...of Canada for further...
DENIS RANCOURT : ...séparée...
INTERPRETER: ...appeal. It was a separate...
25 DENIS RANCOURT : ...sur un déli distinct...
INTERPRETER: ...action suit...
DENIS RANCOURT : ...qui est entièrement...
INTERPRETER: ...on a distinct tour that...
DENIS RANCOURT : ...fini...
30 INTERPRETER: ...is completely...
DENIS RANCOURT : ...qui ne peut plus être

ouvert...

INTERPRETER: ...done with, dealt with, can no longer...

DENIS RANCOURT : ...jamais plus je ne pourrai dire que...

INTERPRETER: ...ever be...

DENIS RANCOURT : ...en soit...

INTERPRETER: ...opened up again. I can say that...

DENIS RANCOURT : ...que la, la question...

INTERPRETER: ...in itself...

DENIS RANCOURT : ...de maintenance et champartie...

INTERPRETER: ...the question of maintenance and champerty...

DENIS RANCOURT : ...peuvent être réouvertes...

INTERPRETER: ...cannot be re-opened...

DENIS RANCOURT : ...dans un processus séparé...

INTERPRETER: ...in a separate...

DENIS RANCOURT : ...mais j'ai plaidé...

INTERPRETER: ...process but I pled...

DENIS RANCOURT : ...que ce financement...

INTERPRETER: ...that this financing...

DENIS RANCOURT : ...est impropre...

INTERPRETER: ...was not proper...

DENIS RANCOURT : ...et ce plaidoirie...

INTERPRETER: ...and that...

DENIS RANCOURT : ...tient toujours.

INTERPRETER: ...pleading...

DENIS RANCOURT : Il n'a pas été exclu.

INTERPRETER: ...it still holds. It had not...

DENIS RANCOURT : On m'a - on me l'a laissé...

INTERPRETER: ...been excluded.

DENIS RANCOURT : ...jusqu'à la dernière minute...

INTERPRETER: I've been allowed...

DENIS RANCOURT : ...et donc, je dis...

INTERPRETER: ...until the last...

DENIS RANCOURT : ...dans ces circonstances-là...

INTERPRETER: ...minute and so, I say...

DENIS RANCOURT : ...quand on m'a laissé plaider...

INTERPRETER: ...in those circumstances...

DENIS RANCOURT : ...jusqu'à la fin...

INTERPRETER: ...when I was allowed to plead...

DENIS RANCOURT : ...et quand on a répondu à mes...

INTERPRETER: ...right till the end and that...

DENIS RANCOURT : ...plaidoiries avec un *reply*...

INTERPRETER: ...there was a reply to the pleadings.

DENIS RANCOURT : ...que dans des circonstances comme celles-là...

INTERPRETER: In such circumstances...

DENIS RANCOURT : ...c'est bien de valeur, mais vous avez accepté...

INTERPRETER: ...it's too bad...

DENIS RANCOURT : ...que certains points...

INTERPRETER: ...but you accepted that...

DENIS RANCOURT : ...puissent être...

INTERPRETER: ...certain points...

DENIS RANCOURT : ...réexaminés...

INTERPRETER: ...that it be...

DENIS RANCOURT : ...pour des raisons
différentes.

INTERPRETER: ...re-examined for different...

DENIS RANCOURT : Si vous n'avez pas...

INTERPRETER: ...reasons.

DENIS RANCOURT : ...pris la peine et...

INTERPRETER: If you didn't...

DENIS RANCOURT : ...vous n'avez pas...

INTERPRETER: ...take the...

DENIS RANCOURT : ...fait votre devoir...

INTERPRETER: ...the time to do...

DENIS RANCOURT : ...d'exiger que ces
paragrapes...

INTERPRETER: ...your homework to...

DENIS RANCOURT : ...soient exclus de mon
plaidoirie...

INTERPRETER: ...insist that those...

DENIS RANCOURT : ...dans ce cas-là...

INTERPRETER: ...paragraphs be...

DENIS RANCOURT : ...vous avez accepté...

INTERPRETER: ...excluded from my pleadings...

DENIS RANCOURT : ...que certaines questions...

INTERPRETER: ...in that case, you accepted...

DENIS RANCOURT : ...que y'a un certain
overlap...

INTERPRETER: ...that certain questions but
there's a certain...

DENIS RANCOURT : ...parce que c'est impliqué...

INTERPRETER: ...overlap because...

DENIS RANCOURT : ...dans l'action, que ça soit

revu.

INTERPRETER: ...it's involved in the...

DENIS RANCOURT : C'est ça, c'est ça...

INTERPRETER: ...case so that it be reviewed...

DENIS RANCOURT : ...la position...

INTERPRETER: ...that it - that you could go over...

DENIS RANCOURT : ...qui serait...

INTERPRETER: ...it.

DENIS RANCOURT : ...à mon sens, juste.

INTERPRETER: So, that is the position that, in my mind, would be...

DENIS RANCOURT : Aussi...

INTERPRETER: ...fair.

DENIS RANCOURT : ...un dernier point...

INTERPRETER: Also, a last point...

DENIS RANCOURT : ...ah oui, deux - un dernier point puis...

INTERPRETER: ...one more point...

DENIS RANCOURT : ...après ça, je veux mentionner quelque chose...

INTERPRETER: ...and then I'll mention something...

DENIS RANCOURT : ...sur ce que monsieur Dearden a dit.

INTERPRETER: ...on what Mr. Dearden...

DENIS RANCOURT : Le dernier point...

INTERPRETER: ...said.

DENIS RANCOURT : ...est le suivant.

INTERPRETER: The last point is the...

DENIS RANCOURT : Monsieur Doody a...

INTERPRETER: ...following. Mr...

DENIS RANCOURT : ...commencé par expliquer
que...

INTERPRETER: ...Doody started by explaining
that...

DENIS RANCOURT : ...j'étais d'accord avec les...

INTERPRETER: ...I was in agreement with...

DENIS RANCOURT : ...grandes sections A...

INTERPRETER: ...the large schedules...

DENIS RANCOURT : ...B, C, les questions A, B, C,
D.

INTERPRETER: ...A, B, C, D.

DENIS RANCOURT : Imaginez le temps que ça aurait
pris...

INTERPRETER: Imagine...

DENIS RANCOURT : ...si j'avais été d'accord...

INTERPRETER: ...if I had not agreed...

DENIS RANCOURT : ...mais ça, c'est un autre
problème...

INTERPRETER: ...the time we would've taken today
instead...

DENIS RANCOURT : ...mais la façon qu'il l'a
dit...

INTERPRETER: ...just imagine but the way...

DENIS RANCOURT : ...c'est comme si
j'acceptais...

INTERPRETER: ...he said it...

DENIS RANCOURT : ...ses raisons...

INTERPRETER: ...it was as if I was...

DENIS RANCOURT : ...son raisonnement. J'accepte
pas son raisonnement.

INTERPRETER: ...accepting his...

DENIS RANCOURT : J'ai simplement dit...

INTERPRETER: ...reasoning. I don't.

DENIS RANCOURT : ...j'accepte vos refus...

INTERPRETER: I simply...

5 DENIS RANCOURT : ...de vous - de me donner ces documents-là.

INTERPRETER: ...said I accept your refusals...

DENIS RANCOURT : C'est tout ce que j'accepte.

INTERPRETER: ...to give me.... That's all...

10 DENIS RANCOURT : J'accepte vos refus de me...

INTERPRETER: ...I'm accepting.

DENIS RANCOURT : ...donner ces documents-là.

INTERPRETER: I'm...

DENIS RANCOURT : Je n'accepte pas vos arguments.

15 INTERPRETER: ...recognizing his refusal...

DENIS RANCOURT : Je n'accepte pas...

INTERPRETER: I don't...

DENIS RANCOURT : ...vos arguments.

INTERPRETER: ...accept his argumentation.

20 DENIS RANCOURT : Pourquoi je ne...

INTERPRETER: Why...

DENIS RANCOURT : ...dois pas...

INTERPRETER: I don't accept his argumentation...

25 DENIS RANCOURT : ...pourquoi je n'ai pas le droit...

INTERPRETER: ...as to why...

DENIS RANCOURT : ...à ces documents?

INTERPRETER: ...I'm not entitled....

30 DENIS RANCOURT : Je n'accepte pas...

INTERPRETER: I don't recognize....

DENIS RANCOURT : ...les arguments. J'accepte

uniquement...

INTERPRETER: I only...

DENIS RANCOURT : ...que je ne vais pas
recevoir...

INTERPRETER: ...recognize that...

DENIS RANCOURT : ...ces documents.

INTERPRETER: ...I will not be receiving those...

DENIS RANCOURT : C'est tout.

INTERPRETER: ...documents. That's all...

DENIS RANCOURT : Contrairement à ce que
monsieur...

INTERPRETER: ...I'm recognizing.

DENIS RANCOURT : ...Doody a dit...

INTERPRETER: Contrary to what Mr. Doody...

DENIS RANCOURT : ...et...

INTERPRETER: ...claims I've conceded.

DENIS RANCOURT : ...et ça, ça c'est un choix
stratégique de ma part.

INTERPRETER: And that is a strategic choice of
mine...

DENIS RANCOURT : Et finalement, je voudrais...

INTERPRETER: ...on my part.

DENIS RANCOURT : ...adresser ou répondre à ce
que monsieur...

INTERPRETER: And finally, I'd like...

DENIS RANCOURT : ...Dearden a dit.

INTERPRETER: ...to answer Mr. Dearden.

DENIS RANCOURT : Monsieur Dearden a...

INTERPRETER: Mr. Dearden...

DENIS RANCOURT : ...fait écho encore une fois...

INTERPRETER: ...echoed once again...

DENIS RANCOURT : ...son - ce, ce - je pense que le sapin qu'il essaie de nous passer est le suivant.

INTERPRETER: I think that the...

DENIS RANCOURT : Il a un *straw man*...

INTERPRETER: ...quick one he's trying to put over on us...

DENIS RANCOURT : ...qu'il appelle...

INTERPRETER: ...is he has this strong [*sic*] man...

DENIS RANCOURT : ...*litigation by proxy linked to Charter*...

INTERPRETER: ...called litigation...

DENIS RANCOURT : ...et tout est basé là-dessus...

INTERPRETER: ...by proxy on *Charter*.

DENIS RANCOURT : ...et il attaque ce *straw man*...

INTERPRETER: Everything is based on that.

DENIS RANCOURT : ...et moi, je dis...

INTERPRETER: He keeps...

DENIS RANCOURT : ...c'est pas du tout ça que je fais.

INTERPRETER: ...attacking that and I keep telling him...

DENIS RANCOURT : Moi, j'ai une...

INTERPRETER: ...that's not what I'm doing.

DENIS RANCOURT : ...un, un, un abus de processus en...

INTERPRETER: I am claiming an...

DENIS RANCOURT : ...trois branches.

INTERPRETER: ...abuse of process...

DENIS RANCOURT : Si on lit toute...

INTERPRETER: ...three-pronged. If you read...

DENIS RANCOURT : ...toutes [sic] les
5 paragraphes...

INTERPRETER: ...all the paragraphs...

DENIS RANCOURT : ...de mon *Statement of Defence*,
on voit bien...

INTERPRETER: ...of my defence...

DENIS RANCOURT : ...que c'était mon intention
10 d'avoir...

INTERPRETER: ...you will see clearly that it
is...

DENIS RANCOURT : ...cette protection-là...

INTERPRETER: ...my intention...

DENIS RANCOURT : ...avec abus de processus...

INTERPRETER: ...to have that protection...

DENIS RANCOURT : ...dans les trois branches que
15 j'ai mentionnées.

INTERPRETER: ...those three prongs...

DENIS RANCOURT : Donc, je...

INTERPRETER: ...in an abuse of process.

DENIS RANCOURT : ...je n'accepte pas le *straw*
20 *man* de monsieur Dearden...

INTERPRETER: I don't accept...

DENIS RANCOURT : ...et je n'accepte pas sa...

INTERPRETER: ...Mr. Dearden's...

DENIS RANCOURT : ...caractérisation...

INTERPRETER: ...straw man and his
25 characterization...

DENIS RANCOURT : ...de comment on doit...

30

Représentations par Denis Rancourt
Reply submissions by Mr. Doody

INTERPRETER: ...as to how...

DENIS RANCOURT : ...considérer cette chose.

INTERPRETER: ...we need to...

DENIS RANCOURT : C'est tout, merci.

INTERPRETER: ...look at that. That's all.

Thank you.

LE TRIBUNAL : Merci.

THE COURT: Any reply?

MR. DOODY: Just very briefly, Your Honour.

REPLY SUBMISSIONS BY MR. DOODY:

MR. DOODY: Mr. Rancourt said, in effect, that I was misguided when I submitted that the finding on the champerty motion meant there was a final - a finality to the decision of whether the funding was proper and with respect, in my submission, Mr. Rancourt casts this issue in the wrong light. The issue - the principle of issue estoppel is that once a fact is decided in litigation, that fact is not subject to being revisited so long as it meets the test for issue estoppel and this meets the test. It was the same or the litigation or it's between the same parties or their privies, clearly, Mr. Dearden's client is a party to that issue and fought it long and hard on whether or not the funding by the university was proper. Once the fact has been established, you can't re-litigate that fact even for another purpose. If the fact that was important was whether the traffic light was green or red, if in

lawsuit number one, the Court came to the conclusion that the light was green and then the plaintiff came up with a new way of suing the defendant in another action for which he also had to prove that the light was green but it's for a different reason, he couldn't do that because the Court had decided the light was green. Mr. Rancourt admitted, in his submissions before you, Your Honour, that what he's trying to do in his defence as he says, it's clear on the Statement of Defence, he said - and I made a note, in translation, but I made a note - Mr. Rancourt told you he wants to prove that the financing was not proper. That's what he told you. He wants to prove that because he says it'll found an abuse of process argument, a different abuse of process argument but this Court held that the financing was proper and that was key to the champerty motion because, as the Court held, you can't make a finding of champerty if the funding - if the decision to fund the lawsuit had a proper basis. So, the Court concluded it had a proper basis, therefore there was no basis to argue champerty and therefore, the factual issue, which is whether or not there was a proper basis has been established and Mr. Rancourt can't say, "Okay, that was only for the champerty motion. Now, I'm gonna come around in this lawsuit..."

THE COURT: I think you're somewhat repeating all - your...

MR. DOODY: Then I...

Reply submissions by Mr. Doody
Représentations par Denis Rancourt

THE COURT: ...your argument now.

MR. DOODY: Your Honour has a point. Those are my submissions.

DENIS RANCOURT : Est-ce que je peux me permettre de faire une...

INTERPRETER: May I be allowed...

DENIS RANCOURT : ...très courte réponse?

INTERPRETER: ...to make a quick reply?

LE TRIBUNAL : Allez-y.

INTERPRETER: Go ahead.

REPRÉSENTATIONS PAR DENIS RANCOURT :

DENIS RANCOURT : Ce n'est pas le cas d'une lumière qui est rouge...

INTERPRETER: That is not the case...

DENIS RANCOURT : ...ou verte.

INTERPRETER: ...of a red...

DENIS RANCOURT : C'est un cas compliqué où les faits...

INTERPRETER: ...or a green light.

DENIS RANCOURT : ...qui avaient été considérés...

INTERPRETER: It's a very complex...

DENIS RANCOURT : ...dans la motion de champartie...

INTERPRETER: ...situation where the facts...

DENIS RANCOURT : ...pour arriver à la conclusion...

INTERPRETER: ...considered in the champerty motion...

DENIS RANCOURT : ...sont différents...

INTERPRETER: ...to arrive at the conclusion...

DENIS RANCOURT : ...que les faits qui
pourraient...

INTERPRETER: ...are different than those...

DENIS RANCOURT : ...sortir ici.

INTERPRETER: ...are the facts that could....

LE TRIBUNAL : Mais là, vous distinguez entre
la...

INTERPRETER: Well, you're distinguishing...

LE TRIBUNAL : ...entre - vous faites une
distinction entre la preuve...

INTERPRETER: ...between the evidence...

LE TRIBUNAL : ...et la décision...

INTERPRETER: ...and the decision...

LE TRIBUNAL : ...de faits.

INTERPRETER: ...are on fact.

THE COURT: Okay.

INTERPRETER: All right.

THE COURT: See you everybody tomorrow at ten.
We have other matters to decide.

LE TRIBUNAL : On a d'autres matières à examiner.

INTERPRETER: We have other matters to...

MR. DEARDEN: Yes, Your Honour, we have scheduled
for tomorrow at ten a *Voir Dire* on whether I can
bring up in the trial the defendant's conduct in
terms of interlocutory motions that have been
brought and I'm gonna brief you on that...

THE COURT: Yeah.

MR. DEARDEN: ...with that. I'll have a brief
factum for you tomorrow morning, then I'll try to

get over at eight o'clock in the morning to you done but we also have some of my trial management conference issues, Your Honour, that I...

THE COURT: Yes. Yes. There are some and even maybe a few that were on the list of Mr. - so, yes, we have to try to treat - clear up those issues so that we are ready to go on the Thursday morning so that...

DENIS RANCOURT : Donc, si je peux...

INTERPRETER: So, if I may...

DENIS RANCOURT : ...compléter ce que monsieur Dearden dit...

INTERPRETER: ...complement what Mr. Dearden is saying.

DENIS RANCOURT : Donc, c'est...

INTERPRETER: So, it's my...

DENIS RANCOURT : ...c'est mon *Voir Dire* demain matin...

INTERPRETER: ...*Voir Dire* tomorrow morning...

DENIS RANCOURT : ...qui commence à dix heures. Donc, je vais être...

INTERPRETER: ...that's starting at 10 a.m.

DENIS RANCOURT : ...le premier à parler, si je comprends bien?

INTERPRETER: So, I will be the first one...

LE TRIBUNAL : Votre *Voir Dire*?

INTERPRETER: ...to speak?

DENIS RANCOURT : C'est à dire j'ai fais un *Voir Dire*.

INTERPRETER: Well, I...

DENIS RANCOURT : On fait un *Voir Dire* pour...

INTERPRETER: ...make the *Voir Dire* or...

DENIS RANCOURT : ...déterminer parce que...

INTERPRETER: ...doing the *Voir Dire*...

DENIS RANCOURT : ...j'avance que monsieur
Dearden...

INTERPRETER: ...to determine because I'm
claiming...

DENIS RANCOURT : ...n'a pas le droit...

INTERPRETER: ...that Mr. Dearden...

DENIS RANCOURT : ...d'avancer des évidences...

INTERPRETER: ...does not have the right...

DENIS RANCOURT : ...qu'il veut avancer...

INTERPRETER: ...to proper...

DENIS RANCOURT : ...par rapport à....

INTERPRETER: ...evidence...

DENIS RANCOURT : Vous savez j'avais expliqué...

INTERPRETER: ...that he wishes to proper.

LE TRIBUNAL : Il ne peut pas parler de...

INTERPRETER: That he can't speak...

LE TRIBUNAL : ...des procédures
interlocutoires...

INTERPRETER: ...about the interlocutory...

DENIS RANCOURT : Oui.

LE TRIBUNAL : ...puis de votre...

INTERPRETER: ...processes...

LE TRIBUNAL : ...de vos actions...

DENIS RANCOURT : Des coûts.

LE TRIBUNAL : ...de tout ça là.

INTERPRETER: ...and your action...

DENIS RANCOURT : Etcétéra et...

INTERPRETER: ...your conduct, et cetera.

DENIS RANCOURT : ...aussi que...

INTERPRETER: Yes, et cetera.

DENIS RANCOURT : ...le, le, le fait qu'il y a...

INTERPRETER: And also...

LE TRIBUNAL : Vous avez de...

INTERPRETER: ...you have...

LE TRIBUNAL : ...la jurisprudence...

INTERPRETER: You have case law...

LE TRIBUNAL : ...à cet effet-là?

INTERPRETER: ...on that?

DENIS RANCOURT : Je, je suis en train
d'élaborer...

INTERPRETER: I am...

DENIS RANCOURT : ...la, la chose.

INTERPRETER: ...flushing...

LE TRIBUNAL : Je pense que c'est un...

INTERPRETER: ...fleshing it out.

LE TRIBUNAL : ...domaine...

INTERPRETER: I think...

LE TRIBUNAL : ...qui est plus ou moins...

INTERPRETER: ...that that is a...

LE TRIBUNAL : ...bien établi...

INTERPRETER: ...very established...

LE TRIBUNAL : ...que à partir du moment du...

INTERPRETER: ...point of law...

LE TRIBUNAL : ...de l'allégation...

INTERPRETER: ...where the...

LE TRIBUNAL : ...de la diffamation...

INTERPRETER: ...allegation of...

LE TRIBUNAL : ...tout ce qui se passe...

INTERPRETER: ...defamation...

LE TRIBUNAL : ...après peut être examiné par le jury.

DENIS RANCOURT : Oui, je comprends ça...

INTERPRETER: ...comes out afterwards...

DENIS RANCOURT : ...et je connais bien...

INTERPRETER: ...post-conduct...

DENIS RANCOURT : ...cette jurisprudence.

INTERPRETER: ...post-defence conduct...

DENIS RANCOURT : Donc, je vais argumenter...

INTERPRETER: ...maybe to the jury.

DENIS RANCOURT : ...dans le contexte de la jurisprudence.

INTERPRETER: I understand. I will argue that...

DENIS RANCOURT : Mais aussi...

INTERPRETER: ...in the context of jurisprudence...

DENIS RANCOURT : ...donc, y'a...

INTERPRETER: So...

DENIS RANCOURT : ...y'a trois ou quatre points comme ça...

INTERPRETER: ...there are three or four points...

DENIS RANCOURT : ...que je vais argumenter...

INTERPRETER: ...that I am going to make...

DENIS RANCOURT : ...et je pense...

INTERPRETER: ...like that...

DENIS RANCOURT : ...que je vais faire ça en premier.

INTERPRETER: ...and I think I will...

DENIS RANCOURT : Monsieur Dearden...

INTERPRETER: ...go first...

DENIS RANCOURT : ...va pouvoir répondre...
INTERPRETER: ...and Mr. Dearden can reply...
DENIS RANCOURT : ...puis...
LE TRIBUNAL : Oui, après ça, on fera les autres
5 matières qui sont à...
INTERPRETER: And then we'll either deal with...
LE TRIBUNAL : ...déterminer là.
INTERPRETER: ...other undetermined matters.
LE TRIBUNAL : Mais du moins, il avait...
10 INTERPRETER: But at least...
LE TRIBUNAL : ...c'était surtout y'avait des
petits points qu'on...
INTERPRETER: ...that was...
LE TRIBUNAL : ...voulait aussi discuter là...
15 INTERPRETER: ...those were the little points...
LE TRIBUNAL : ...pour tenter de...
INTERPRETER: ...that we also wished to...
DENIS RANCOURT : Oui.
INTERPRETER: ...iron out...
20 LE TRIBUNAL : ...s'entendre.
INTERPRETER: ...to come to an understanding.
LE TRIBUNAL : Sinon, s'entendre...
INTERPRETER: Otherwise...
LE TRIBUNAL : ...que je vous donne des
25 directives, est-ce que...
INTERPRETER: ...otherwise, I will give you...
LE TRIBUNAL : ...de cette façon-là...
INTERPRETER: ...rulings...
LE TRIBUNAL : ...tout le monde puisse jouer...
30 INTERPRETER: ...so that everyone knows...
LE TRIBUNAL : ...être sur la même page.

INTERPRETER: ...everybody can...

LE TRIBUNAL : En ce qui a trait aux deux...

INTERPRETER: ...work according to the same
rules.

5 LE TRIBUNAL : ...décisions ici...

INTERPRETER: With regards to the two decisions
that are now pending on my behalf...

LE TRIBUNAL : ...je vais tenter de...

INTERPRETER: ...I...

10 LE TRIBUNAL : ...vous donner une réponse...

INTERPRETER: ...will attempt to give you...

LE TRIBUNAL : ...demain matin...

INTERPRETER: ...an answer...

LE TRIBUNAL : ...mais c'est certain...

15 INTERPRETER: ...a ruling tomorrow morning...

LE TRIBUNAL : ...que je vais...

INTERPRETER: ...but...

LE TRIBUNAL : ...devoir...

INTERPRETER: ...for sure...

20 LE TRIBUNAL : ...retarder...

INTERPRETER: ...I will need to...

LE TRIBUNAL : ...la publication...

INTERPRETER: ...delay...

LE TRIBUNAL : ...de tous les motifs...

25 INTERPRETER: ...the publication...

LE TRIBUNAL : ...mais au moins...

INTERPRETER: ...of my reasons...

LE TRIBUNAL : ...parce qu'on devrait
commencer...

30 INTERPRETER: ...at least because we shouldn't...

LE TRIBUNAL : ...le procès sans...

INTERPRETER: ...we shouldn't start the trial proper before...

LE TRIBUNAL : ...que vous sachiez à quoi vous attendre...

INTERPRETER: ...you know what to expect...

LE TRIBUNAL : ...mais de l'autre côté...

INTERPRETER: ...but on the other hand...

LE TRIBUNAL : ...je ne vois pas comment je pourrais, pour les deux décisions...

INTERPRETER: ...I can't contemplate...

LE TRIBUNAL : ...élaborer des motifs...

INTERPRETER: ...how I could flesh out...

LE TRIBUNAL : ...complets. Ça fait que...

INTERPRETER: ...complete reasons.

LE TRIBUNAL : ...mais je vais tenter de vous donner une réponse demain matin...

INTERPRETER: But I will try to provide you with a ruling in the morning...

LE TRIBUNAL : ...à tout le monde...

INTERPRETER: ...to everyone...

LE TRIBUNAL : ...puis là, vous pourrez agir en conséquence.

INTERPRETER: ...and then you will be able to conduct your...

LE TRIBUNAL : Mais si je suis encore indécis...

INTERPRETER: ...case in consequence. If I'm still...

LE TRIBUNAL : ...bien je serai indécis...

INTERPRETER: ...undecided...

LE TRIBUNAL : ...puis je vous le donnerai...

INTERPRETER: ...I will be...

LE TRIBUNAL : ...un peu plus tard, mais je
vais...

INTERPRETER: ...undecided and I'll...

LE TRIBUNAL : ...tenter d'au moins prendre la
décision...

INTERPRETER: ...tell you when I'm no longer...

LE TRIBUNAL : ...mais vous aurez pas des
motifs...

INTERPRETER: ...but I'm going to...

LE TRIBUNAL : ...complets demain matin.

INTERPRETER: ...but I'll tell you where...

LE TRIBUNAL : Je vais réserver...

INTERPRETER: ...I'm at tomorrow morning...

LE TRIBUNAL : ...mes motifs pour plus tard.

INTERPRETER: ...but don't expect fully fleshed
out reasons.

MR. DOODY: Does Your Honour wish me to attend
tomorrow morning?

THE COURT: As I said, I'll probably give a
decision...

MR. DOODY: I see.

THE COURT: ...but you don't have to be here if
you don't want to and you can have it relayed -
whatever by whoever else is here, which can
probably - or you can send somebody. I - but you
don't have to be here. All right?

MR. DOODY: Your Honour won't take offence if I'm
not?

THE COURT: No, I won't, I won't...

MR. DOODY: Okay.

THE COURT: ...I won't.

MR. DOODY: Thank you.

THE COURT: All right.

CLERK REGISTRAR: Court's in recess until
tomorrow at 10:00.

...WHEREUPON THESE PROCEEDINGS WERE ADJOURNED

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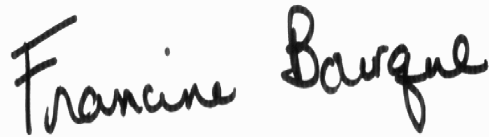
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FORM 2

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Evidence Act, Subsection 5(2)

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October 15, 2014

(Date)

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SUPERIOR COURT OF JUSTICE

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B E T W E E N :

JOANNE ST. LEWIS

Plaintiff

10
v.

DENIS RANCOURT

Defendant

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P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE JUSTICE M. CHARBONNEAU
on May 14, 2014, at OTTAWA, Ontario

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APPEARANCES:

R. Dearden

Counsel for the Plaintiff

D. Rancourt

In Person

(i)
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SUPERIOR COURT OF JUSTICE

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E X H I B I T S

<u>EXHIBIT NUMBER</u>	<u>ENTERED ON PAGE</u>
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REASONS FOR RULING	1
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Legend

[sic] - Indicates preceding word has been reproduced verbatim
and is not a transcription error.
(ph) - Indicates preceding word has been spelled
phonetically.

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1.
Joanne St. Lewis v. Denis Rancourt
Reasons for Ruling - Charbonneau, J.

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WEDNESDAY, MAY 14, 2014

LE TRIBUNAL : Bonjour.

THE COURT: Good morning.

INTERPRÈTE : Bonjour.

DENIS RANCOURT : Bonjour, Monsieur le juge.

INTERPRETER: Hello, Your Honour.

THE COURT: All right, so I'm ready to give my decisions in both matters that we argued Monday and Tuesday. All right. First of all - and I've prepared some reasons. I think it's important - just trying to maybe postpone giving full reasons but I think even though - could give more extensive reasons, I think it's clear enough and I think it's important, for the purpose of the parties, knowing where we're going to have some reason at this time, and not only a bare decision or order and I don't want to postpone this, obviously.

R E A S O N S F O R R U L I N G

CHARBONNEAU, J. (Orally):

So, I've come to the conclusion that Mr. Rancourt may not advance before the jury the defence of claim by proxy, pleaded in paragraphs 61 to 67 of the Statement of Defence for the following reasons. In order to succeed, the defendant will have to prove, on a balance of probabilities, the following: a), that the action brought by Joanne St. Lewis is, in fact, an action by the University of Ottawa, financed by government or

public funds; b), that the use of government or public funds by the university was by a government entity in order to pay the proxy's legal fees to enable the proxy, who was also an employee of the government entity, to bring an action of defamation against a citizen with the purpose of inhibiting the justified criticism of the government's entity and that as such, it is inconsistent with section 2B of the *Canadian Charter of Rights and Freedom*; c), the law grants an absolute privilege to a citizen against a civil action and defamation initiated against a citizen by this government, whether directly or by the use of a proxy; d), in this action, the university is providing improper or interested financial support for the plaintiff and this has the effect of creating an imbalance between the legal concepts of protection against defamation, vis-à-vis *Charter* or protected right of free speech; and e), the University of Ottawa brings this action by proxy to punish, intimidate or silence the defendant and is therefore a frivolous, vexatious action and an abuse of process. Now, I have carefully reviewed the reasons of Mr. Justice Smith and the reasons of the Court of Appeal in dismissing the appeal from Justice Smith's decision in the champerty application. I conclude that the defendant is estopped from attempting to prove most facts listed above, which would support his pleading, because they have already been decided against him by a final judicial decision in the champerty

5 motion. In that decision, Justice Smith found:
one, the action is an action brought by the
plaintiff to protect her reputation and not an
action brought by the university or for any
alleged ulterior motive. The university's
decision to pay the plaintiff's legal fees was
proper and justified in all the circumstances and
it was not to silence the defendant.

10 The defendant submits that he did not have all
the evidence, he now has available to him, when
the matter was before Justice Smith. Moreover,
he submits that he has more tools available to
him now in this trial than what he had in the
15 application before Justice Smith. He therefore
submits that it would be unfair to prevent him
from advancing this issue at this time. The
defendant is missing the point, which is that
issue estopped prevents a party from re-
20 litigating the same issues, whether there is more
evidence or better evidence at the second shot at
the can in order to obtain a different result on
issues that have already been finally decided.
The facts have therefore already been decided
25 that the decision to pay the legal fees was
proper and the underlying purpose of this action
is not to silence the defendant, but rather to
protect the reputation of the plaintiff.

30 The defendant has available to him all the common
law defences, and he has pleaded most of them, if
not all of them, in his Statement of Defence. He

may, therefore, succeed in convincing the jury that one or more of the defences applies in this case. There is, therefore, no imbalance, as suggested by the defendant. The mere fact that one party may have a deeper pocket to finance a litigation is not, of itself, the creation of an imbalance, inconsistent with the principles of the *Charter*. That is not the law. I would like also to point out here that a lot of the defendant's submissions were premised on the basis that there was no damages to the plaintiff in this case and that therefore, special consideration or special rules should apply. Now, what we have here - it will be for the jury to decide whether there's damages but obviously, when we exam the pleadings and the allegations, there is certainly ample allegations for a jury to come up and make an award of substantial amount of damages. So, that - the basis that for some reason, the submission, based on the premise, where there's no damage, then the - well, damages are yet to be decided here and they will be decided on the evidence and one cannot come to that conclusion. I find this somewhat perplexing, the submission, because obviously, as I say, the allegations are sufficient that if the plaintiff proves these allegations, the jury may very well award substantial damages. So, as a result, all evidence, which is purported to be introduced for the purpose of proving that the payment of the legal fees was improper or that this action is being brought by the plaintiff as

5 a proxy for the university and that the university is doing so to silence or intimidate the defendant is inadmissible evidence. So, the parties may not, in any way, attempt to present such evidence and are not, in any way, to make any submissions to the same effect in their opening or closing addresses.

10 Now, turning to the summons, there's a motion brought by the university to quash a summons to witness with various witnesses. For the reason that I have just set out in my ruling in relation to the defence by proxy defence, I find that all the documents listed in Schedule C, set out in the motion record, are not relevant and, therefore, need not be produced. Insofar as the documents listed in Schedule B, I find they are protected by litigation privilege. On the evidence before me, I find they were all prepared after there was a reasonable apprehension of litigation and were prepared for the dominant purpose to assist in the apprehended litigation. I reject Mr. Rancourt's contention that the privilege has expired with the final determination of the champerty motion. The champerty motion, in this action, raised common issues. They are closely related proceedings. In fact, the champerty motion was an interlocutory proceeding in this action. I find that the privilege is still alive. The documents listed in Schedule B need not be produced and for sake of - to be complete, I agree with Mr.

Dearden that the - his invoices to the plaintiff are all - are covered also by solicitor and client privilege. All right. So, that takes care of those issues.

DENIS RANCOURT : Monsieur le juge, est-ce qu'il serait possible d'avoir une version écrite de, de ce que vous venez de dire? J'ai, j'ai pris des notes rapidement le plus possible, mais j'aimerais vraiment la précision de la langue.

INTERPRETER: Your Honour, can we get a written version of your reasons? I took notes as best I could but I would really like a written reason.

LE TRIBUNAL : Oui, bien, on peut - vous pouvez demander à la sténographe. Elle va vous donner une transcription de ce que je viens de lire, oui.

INTERPRETER: You can ask for a transcript. The stenographer will give you....

DENIS RANCOURT : Est-ce qu'elle peut faire ça rapidement parce que je sais que d'habitude, ça prend un mois ou plus pour obtenir ça - ce genre de chose.

INTERPRETER: Can she do that? Because normally, it takes a month or more. Can she do that quickly?

STÉNOGRAPHE JUDICIAIRE : C'est à cause que moi je suis ici pour le reste de la semaine. Si que c'est l'autre sténographe la semaine prochaine, je peux faire la semaine prochaine, mais je suis ici toute la semaine.

INTERPRETER: I am here for the rest of the week, so the - another stenographer would be here next

week. We'd have to see what they could do.

LE TRIBUNAL : Bien, vous - y'a tu quelque chose...

INTERPRETER: Well, is there something...

STÉNOGRAPHE JUDICIAIRE : On peut s'organiser.

LE TRIBUNAL : Y'a les motifs là, mais y'a le résultat. Sur le résultat, vous le savez là? We'd have to see what they could do.

INTERPRETER: The reasons - but the result, the result of the reasons I found...

DENIS RANCOURT : Oui, je comprends très bien le résultat.

LE TRIBUNAL : Okay, et puis vous pourrez naturellement, une fois - tout ce que vous pouvez faire, j'imagine, avec les motifs maintenant, ça sera de - après que le procès sera fini, vous pourrez toujours soulever ça comme un moyen d'appel, si vous voulez, mais je veux dire c'est - le résultat est clair. Si vous voulez des questions sur la - ce que ça veut dire pour les fins du procès, je peux vous le dire. C'est qu'on peut - je déclare inadmissible toute la preuve que je viens de dire qui est inadmissible et vous - les parties doivent se - agir en conséquence.

INTERPRETER: Of course, all you can do with the reasons would be to - after the trial would be finished, you could raise that as the grounds for appeal, if you wish but the result - if you want questions as to what it means for the purposes of our trial, I can tell you. You cannot - I am declaring inadmissible all the evidence that I

said was inadmissible, for the reasons I gave, and the parties are expected to conduct themselves in consequence.

5 DENIS RANCOURT : Si je comprends bien, parce que j'ai écouté les, les raisons le mieux possible, la preuve est inadmissible pour avancer les défenses qui sont exclues. En autre mot, si y'a besoin de mentionner des éléments, pas, pas des éléments, mais juste des choses comme - si, par exemple, monsieur Dearden me pose une question puis il me pose spécifiquement une question qui serait exclue...

10 INTERPRETER: If I have understood the reasons is that the evidence is inadmissible to advance the defences that are excluded. In other words, if there is a need to mention other elements, not elements but things like - if, for example, Mr. Dearden asks me a question, specifically...

15 LE TRIBUNAL : Ça c'est - oui, allez-y.

20 INTERPRETER: Go ahead, yeah, well...

DENIS RANCOURT : Qui serait exclue, que moi, je l'utilise en avançant cette défense, qui est exclue, bien évidemment, je, je dois répondre, etcétera, n'est-ce pas?

25 INTERPRETER: That would be excluded - that I use it in advancing that defence, the defence that has been excluded. I have - will be compelled to answer.

30 LE TRIBUNAL : Oui, mais ça, on - ça, c'est des choses qu'on va - qu'on devra décider au fur et à mesure. Si on vous pose une question qui, nécessairement pourrait être juste, vous - doit

inclure - puis que après que vous le - on en discute en absence du jury, j'arrive à la conclusion que la seule façon d'être juste avec votre position, c'est de permettre d'inclure dans votre réponse certains éléments qui sont décidés comme étant inadmissible, bien, ça, c'est des questions qui surviennent de temps à autre pendant le procès, mais tant qu'on a pas la question, on sait pas...

INTERPRETER: Well, those things, we will have to decide on a case-by-case basis. As we go forward, if you're asked a question, which necessarily could be correct and it needed to include and after discussion, in the absence of the jury, and I concluded that the only way to be just towards your position would be to include certain elements that have been deemed inadmissible. Those questions arise from time to time in a trial but until we're confronted with the question...

DENIS RANCOURT : D'accord. Et donc, ça dépend des circonstances et j'aurai à vous consulter à ce moment-là.

INTERPRETER: All right. So, based on the circumstances, I will have to consult you is what you're saying.

LE TRIBUNAL : Oui, bien c'est ça. Il va falloir, à ce moment-là, qu'on - attirer l'attention. Normalement, y'aurait un avocat qui se lèverait puis qui dirait bien on devrait pouvoir dire si ou ça et puis pour s'assurer qu'on ne crée pas un préjudice, il va falloir le

faire en dehors des - de la présence - en absence du jury, oui.

INTERPRETER: Yes, yes. Well, we will need to, at that time, bring the attention. Normally, there would be a lawyer, would rise to their feet and we would need to say this or that to ensure that there is no prejudice created. It needs to be done in the absence of the jury.

DENIS RANCOURT : Monsieur le juge, j'ai une question importante de - qui possiblement amener à une injustice. J'ai - j'aimerais - c'est parce que - je vais vous expliquer mon inquiétude et vous pouvez me répondre, si j'ai - si j'ai raison d'avoir une inquiétude, mais le *factum* pour aujourd'hui, de monsieur Dearden, je l'ai reçu 10 minutes avant dix heures et je suis préoccupé à savoir quand la Cour l'aurait reçu et - parce que y'a beaucoup de matériaux là-dedans qui pourraient influencer les décisions que vous venez de lire et, et dans le sens...

INTERPRETER: Your Honour, I have a question, an important question that possibly will - can lead to an injustice. I would like - I'm going to share with you my concern. You can tell me if I have grounds for being concerned. The factum, from Mr. Dearden today, I received it today ten minutes before ten o'clock and I'm concerned as to when the Court would have received it because there's a lot of material in there that could have influenced the decisions that you've just made.

LE TRIBUNAL : Non, non, mes décisions sont

prises puis ça rien à faire avec ça ici puis je viens de le recevoir - je viens d'ouvrir l'enveloppe en m'habillant ce matin pour venir ici.

INTERPRETER: No, no, no, no, no. My decisions have been made and it has nothing to do with that but I received it - I opened the envelope as I was getting gowned to come to court today.

DENIS RANCOURT : Merci, Monsieur le juge, parce que j'étais préoccupé alors, c'est tout.

INTERPRETER: Thank you, Your Honour, because I was concerned.

THE COURT: I don't know when it was filed but I got this about two minutes - I opened the envelope and took it out and brought it down with me a few minutes before I came down.

MR. DEARDEN: Yeah. Your Honour, I wasn't gonna talk about when you actually opened the envelope but here's an example, Your Honour, where this defendant - and this is in the context of the conduct of the defendant is relevant in the libel action, is suggesting that somehow the factum that we're using today to argue about whether interlocutory motions are relevant in the libel action, that somehow I filed that to influence your decision. I find that so offensive and so preposterous but this is one of those rare torts where when somebody does that, as a defendant in a libel action, it can be used against them to show their conduct, to show their attitude towards the plaintiff and the plaintiff's counsel and this is what we've tolerated for three years.

5 So, I'm going on the record and I know it won't be the first time, Your Honour. I'm not trying to waste your time here, that I object, vehemently, to what this defendant just said to this Court about my factum. Thank you, Your Honour.

10 DENIS RANCOURT : Monsieur le juge, c'est une accusation très sérieuse contre moi. Mon point n'était pas que monsieur Dearden avait l'intention de faire ça. Mon point était que les matériaux ont cette nature-là; sont de cette nature-là que c'est - ça parle beaucoup de, des mêmes choses qu'on a discutées dans les deux derniers jours. C'était ça mon inquiétude, uniquement et donc, je voulais exprimer cette inquiétude-là. C'est tout.

15 INTERPRETER: Your Honour, it's a very serious accusation against me. My point was not that Mr. Dearden's intention was that. I'm saying that the material is of that nature, that it talks a lot about the same things that were discussed in the last two days. That was my unique concern. So, I just wanted to express my concern, that's it.

20 LE TRIBUNAL : Tous les deux, vous avez mis au - sur le dossier, vos positions là et puis, j'en prends bonne note. Bon. Est-ce qu'on peut, peut-être faire juste un tour d'horizon parce que j'ai - je retourne ici à la - à vos deux listes de questions ou de points qui a été - qui serait - qui aurait été bon de soulever. On va aller, puisque monsieur - maître...

INTERPRETER: Both of you, you have put on the record your positions, okay? So, and I am duly taking note of that. Okay. Maybe we could just do a bit of housekeeping. I'm looking at a list here, a list of questions or points that would have been good to bring up. So, we're going to - given that Mr. Rearden [sic]...

THE COURT: Mr. Rearden [sic] was the first to raise the trial management conference issue. Let's look at his list and see - for a minute, simply a survey of the matters that have to be looked at.

SUBMISSIONS BY MR. DEARDEN:

MR. DEARDEN: I have a list, Your Honour, that I hand-wrote that might expedite things....

THE COURT: Yeah, I have the trial management conference issues list here. Is that what you....

MR. DEARDEN: Yeah, but what's left, if that assists, Your Honour, I can...

THE COURT: Yeah, you can - I can - well, I can simply...

MR. DEARDEN: So, the bilingual transcript order that I'm seeking.

THE COURT: Okay, that - is that - oh, yeah, that's here.

MR. DEARDEN: And I want an exclusion. I'm gonna request an exclusion of witnesses order.

DENIS RANCOURT : Est-ce...

DENIS RANCOURT: Can you...

DENIS RANCOURT : Est-ce que vous pouvez dire les numéros sur la liste?

INTERPRETER: Couldn't you please say the numbers on the list?

MR. DEARDEN: No, I don't....

LE TRIBUNAL : C'est neuf, trois petits I.

INTERPRETER: Nine and three small I's.

DENIS RANCOURT : Merci.

MR. DEARDEN: Why don't you just write it down?

The third pre-trial management or trial management issue, Your Honour, is demonstrative aids. I have, Your Honour, I may as well show you this. The articles in issue, the two articles in issue, I've numbered them and highlighted the exact words of - exact words complained of and I want to use this - sorry - I wanna use this in my opening address to the jury and this is commonly done, Your Honour, in jury trials that - in libel actions that you - so that you avoid any confusion on the part of the jury as to what are the stings and what number you're referring to. It really expedites things and say - you know, ladies and gentlemen of the jury or to the witness and I want you to read paragraph number six on the February 11, 2011, article and often, you won't even have to re-read it. So, it saves an enormous amount of time. And so I - there's eight passages that are in issue that are highlighted. So, that, that's what I wanted to make sure before, of course, I showed it to the jury, that I could show it to the jury and we use it throughout the trial. The next matter is

5
quite minor, Your Honour. There's some
productions or one letter that I've written Mr.
Rancourt about that his expert witness referred
to in the report and I asked him to produce that
letter that - to Mr. Rancourt that the expert
referred to and he has not produced that yet. It
will save a lot of time to not have to have a
voir dire about that and there's....

DENIS RANCOURT : Quel expert?

10
INTERPRETER: What expert?

MR. DEARDEN: Mr. - Dr. Cooperstock referred to a
letter. I - I'll have the letter. I'm just
going through the list...

THE COURT: Okay, yeah, yeah, mm-hmm.

15
MR. DEARDEN: ...now, Your Honour. I'm not
arguing. So, there's a letter from
Dr. Cooperstock that I'd like before the trial
starts and there's two transcripts that I'm going
to be examining Mr. Rancourt on, that I sent that
20
I - one is the video clip. He's embedded a
video, a YouTube video of Malcolm X in the first
article in issue and I had it transcribed by a
court reporter and I've - I sent it to
Mr. Rancourt a while ago to have him confirm the
25
accuracy. He's not done so and then there's a
second radio interview that Mr. Rancourt just
gave to somebody, located in Japan, that I sent
him a transcript of and asked him to confirm the
30
accuracy. He gave that interview a couple of
weeks ago about how he thinks there should be no
libel laws in this country. Then I want to
address Mr. Rancourt's testimony in-Chief. We

5 don't - we may not have to do that today, Your Honour, but it's my submission that Mr. Rancourt is not gonna get on the stand and give a lecture for two days. He thinks he's gonna testify for two days. He, in-Chief, is not to argue. He's not to refer to hearsay. He is to answer as - or give the testimony as to matters that are within his direct knowledge and not be making argument or.... So anyway, I think there needs to be some ground rules set as to how he conducts his examination in-Chief of himself and I have to confess, I've never seen that done before and so, we should have a discussion of that before Mr. Rancourt testifies. And then, Your Honour, 10 in preparing for how the exhibits would go in, I've decided that the best way and the most expeditious way, for at least three of the witnesses, Professor St. Lewis, Robert Major and Allan Rock, is that I make a Book of Exhibits. Like, we do have trial - a book of documents but they didn't go in the order of what witness is relevant and that would just create a lot of wasted time. So, I'm putting together, for instance, with Professor St. Lewis, two volumes 20 of exhibits, pretty much in the order, I hope, that my examination in-Chief goes. And if it turns out that one of those tabs is ruled inadmissible, if Mr. Rancourt objects and all of those exhibits have been produced and are in the trial books, but we just rip it out. We just - 30 if something's ruled inadmissible but that's how I intend to approach three of my main witnesses.

THE COURT: You'll provide a copy in advance?

MR. DEARDEN: If we can get it in advance. It's not gonna be too - it's not done yet.

THE COURT: Oh, okay.

MR. DEARDEN: Okay, it's not done yet. It's almost done, but it's not done and won't be done until late in the day.

DENIS RANCOURT: Can...

DENIS RANCOURT : Est-ce que je peux demander une...

LE TRIBUNAL : Non.

DENIS RANCOURT : ...précision par rapport à ce que monsieur Deardon vient de dire?

INTERPRETER: Can I ask for a clarification with regards to what Mr. Deardon has just stated?

DENIS RANCOURT : Est-ce que...

DENIS RANCOURT: Will these books, that you're talking about, contain only exhibits that are in your present trial book of documents?

MR. DEARDEN: Pretty sure. I'm...

DENIS RANCOURT: Is that...

MR. DEARDEN: ...pretty sure.

DENIS RANCOURT: Is that yes?

MR. DEARDEN: I said I'm pretty sure. Do I have the 50 exhibits in front of - sorry Your Honour, I should be addressing you. There's no new documents that haven't been produced on this defendant, Your Honour. I think all of them are in the trial book, but just hang on a sec. I know for Mr. Major and Mr. Rock, there's gonna be some additional documents that were produced by Mr. Doody last Friday, some of which I haven't

gone through completely but he produced to Mr.
Rancourt...

THE COURT: Oh, I see. I see.

MR. DEARDEN: ...and I - you know...

THE COURT: Part of his production under the
summons?

MR. DEARDEN: Yeah, that he said yesterday they
were relevant documents that he's produced to
both sides. There's a couple of those emails
that I may want to address those witnesses about
and they're not in the trial book because I just
got them Friday.

THE COURT: Okay.

MR. DEARDEN: So, that's....

THE COURT: That's the list?

MR. DEARDEN: That's the list - oh, the other
demonstrative aid, sorry, is Professor St. Lewis
has created a timeline on her Mac computer here
and she wants to refer to how this litigation has
been in her life for the last three years. So,
she's produced on electronic timeline that I
assume there's no problem in - like, we'll put it
up on the screen at some point during her
testimony, as to events that have happened from
May 18th of 2011 through to today.

DENIS RANCOURT : Donc, ça, c'est juste les
items, mais on va les discuter...

INTERPRETER: So, these are just the items
we're...

LE TRIBUNAL : Oui, oui, on va les...

DENIS RANCOURT : ...un-à-un, c'est ça?

LE TRIBUNAL : ...adresser.

DENIS RANCOURT : Oui, mm-hmm.

INTERPRETER: Yeah, yes, we're going to go through the items.

LE TRIBUNAL : Vous, est-ce que vous avez des...

THE COURT: Any other items?

MR. DEARDEN: I'm sorry, Your Honour?

THE COURT: Any other items that you...

MR. DEARDEN: No. No.

THE COURT: No?

MR. DEARDEN: No, thank you, Your Honour.

THE COURT: All right. So, what about....

LE TRIBUNAL : Monsieur Rancourt...

DENIS RANCOURT : Oui?

LE TRIBUNAL : ...est-ce que y'a des questions qui demeuraient de votre côté?

INTERPRETER: Mr. Rancourt, do you have any issues for trial management?

SUBMISSIONS BY MR. RANCOURT:

DENIS RANCOURT : Oui, quelques unes. Je vais les mentionner tout de suite. Y'avait, dans mon document original, les paragraphes 14, 15 et 16, qui sont essentiellement ensemble, le *voir dire* qu'on va faire aujourd'hui, n'est-ce-pas?

INTERPRETER: A few. I'll raise them now. There was, in my original document, 14, 15, 16 paragraphs. They are the *voir dire* that we are going to conduct today, right?

LE TRIBUNAL : Okay.

THE COURT: All right.

DENIS RANCOURT : Et en suite, j'ai - moi,

j'avais - je voulais avoir des précisions et discuter la question - vous devez faire une décision par rapport à si un des blogues est limité par un statut et cette décision...

INTERPRETER: That'll be dealt with today so and then I had - I wanted clarifications and discuss the issue. You need to make a ruling with regards to whether the blog is limited by a status.

LE TRIBUNAL : Excusez-moi. Excusez. J'ai pas compris.

INTERPRETER: I'm sorry? I didn't understand you.

DENIS RANCOURT : Excusez-moi. Donc, je parle du paragraphe quatre dans ma liste.

INTERPRETER: I'm sorry. Paragraph four in my list.

LE TRIBUNAL : Ah, okay.

DENIS RANCOURT : Et dans - ce que j'essaye d'expliquer, c'est que la Cour a besoin de prendre une décision, vis-à-vis si un des deux blogues est inadmissible pour une raison de statut, parce que y'a une limite de temps qui n'a pas été respectée. Cette décision-là, implique deux experts témoins, est une question de droit assez compliqué et je voulais signaler que ça doit être déterminé avant la charge au jury parce que ça exclurait entièrement un des - le blogue le plus important et tous les évidences qui sont rattachées à ce blogue-là. Ça excluerait tout ça dans la considération du jury, si jamais la décision légale, que ce blogue est exclu pour des

raisons de limite obligatoire, ça aurait un impact très significatif...

5 INTERPRETER: What I'm trying to say is that the Court needs to make a ruling with regards to one of the two blogs being inadmissible for a reason of statute with regards to limitation of time - time of - time-barred. That involves two expert witnesses. It is a fairly complex, legal argument and I wanted to point out that it needs to be determined before the charge to the jury because it would entirely exclude one of the most important blog and all the evidence pertaining to that blog. That would be excluded from the consideration of the jury if the ruling on the point of law were to establish that, that blog was limited, mandatorily, if there would be a quite significant impact...

15 LE TRIBUNAL : Okay.

20 DENIS RANCOURT : ...sur ce qu'on doit dire au jury.

INTERPRETER: ...on what needed to be told to the jury.

THE COURT: All right.

25 DENIS RANCOURT : Et donc, je voulais signaler ça et m'assurer qu'on ne manquait pas cette précision-là et aussi, dans les questions à la fin, à partir du paragraphe 19, y'en avait certaines qui m'intéressaient, que je veux simplement savoir la procédure. Par exemple, 30 y'en a qu'on a répondu en partie là. Est-ce que les membres du jury, on leur donne à chacun une copie de chaque exhibit?

5 INTERPRETER: And I wanted to point that out and
that we didn't overlook that important detail.
Also, in the issue that the end, paragraph 19 and
going on, there were certain points that were of
interest. I simply wanted to know the process.
For example, there are some that have been partly
answered. Do members of the jury - are they
given each a copy of each exhibit?

10 LE TRIBUNAL : De chaque?

INTERPRETER: Of each what?

DENIS RANCOURT : De chaque élément de preuve, de
chaque chose qui est acceptée comme un *exhibit*.

INTERPRETER: Of each exhibit, anything that's
proffered as exhibit.

15 LE TRIBUNAL : Bien, ils ont - c'est certain
qu'ils auront au moins une copie de chacun des
pièces qu'ils vont amener avec eux dans le - la
façon que les procureurs ou que vous, si - dans
certains cas, dépendent de la pièce, y'a - on
peut toujours en déposer - on en dépose un, mais
peut-être qu'on peut donner au jury des copies
additionnelles, mais le fait est que ce qui est
déposé - ce qui est accepté et déclaré admissible
comme une pièce, les jurys vont l'avoir dans leur
20 salle de délibération pour la contempler.

25 INTERPRETER: Well, for sure. They will have a
copy of each exhibit to take with them. The way
the lawyers or you, in certain instances,
depending on the nature of the exhibit, we can
30 file - well, we need to file one but maybe we can
give jurors additional copies but what is filed
and what is deemed admissible as an exhibit, the

jurors will have that in their deliberation room for their consideration.

5 DENIS RANCOURT : Donc, si je comprends bien, quand monsieur Dearden va faire ses livres de - pour examiner ses témoins, il va donner une copie à la Cour, une copie à moi-même et une copie pour le jury?

10 INTERPRETER: So, if I understand correctly, when Mr. Dearden will make his books to examine his witnesses, he will give me a copy, the Court a copy and a copy for the jury?

LE TRIBUNAL : Normalement, le jury devrait avoir une copie chacun - chacun une copie pour suivre le - pendant la...

15 INTERPRETER: Well, normally, the jury - jurors would each have a copy to follow along.

DENIS RANCOURT : Ah, chacun?

LE TRIBUNAL : Oui.

DENIS RANCOURT : C'est-à-dire six, six membres?

20 INTERPRETER: So, each of them, so six, six members?

LE TRIBUNAL : Oui, oui.

DENIS RANCOURT : Donc...

25 LE TRIBUNAL : Mais ça, je peux pas imposer à quelqu'un de préparer 15 copies là, mais ce que je dis c'est que y'a rien de mal parce que le jury, pendant qu'on examine puis qu'on rentre - on dépose en preuve une photo, supposons, bien, c'est normal que - on peut faire une de deux choses, en avoir une photo qu'on circule puis que 30 là on attend que tout le monde l'ait vu ou on peut avoir 12 photos, mais la même chose si un -

c'est un document et puis qu'on va passer beaucoup de temps sur le document, c'est normal que tout le monde ait une copie, mais ça, je laisse ça aux parties.

DENIS RANCOURT : Oui. Je...

LE TRIBUNAL : Je veux dire à le faire.

INTERPRETER: But that I can't impose on a party to prepare 15 copies but what I can say is there's no harm because while the jury - while one is examining a picture, for example, that's been filed as an exhibit, it's normal that - we can do one of two things. We can have one picture that goes around and we wait till everyone's seen it or we each have a picture or if it's a document and we're gonna spend a lot of time on the document, it would be normal for each person to have a document but that I leave it to your discretion.

DENIS RANCOURT : Mais c'est important que je sache...

INTERPRETER: Well, it's important that I know.

LE TRIBUNAL : Le plus efficace. Oui.

DENIS RANCOURT : ...je sache ça. Donc, c'est au choix - c'est au choix du parti et quand on - quand on fait ça, ça va - ça peut être des documents individuels? Ça n'a pas besoin d'être relié dans un livre? On peut donner ce jour-là, à mesure qu'on avance avec notre examination du témoin, y'a un document, on donne six copie. Là, on fait; un autre document, on donne six copies.

INTERPRETER: It's up to the parties then? It's important that I know. So, when we do that, it

can be individual documents. They don't need to be bound in a book. We can give that day, as we go with the examination of the witnesses. There's a document, we give them six copies and we...

LE TRIBUNAL : Écoutez, comme je dis, c'est l'efficacité de la présentation. Ça, c'est du - c'est à vous. Y'a pas de règle spécifique là. La seule chose, c'est que il faut que la pièce soit admissible.

INTERPRETER: As I've said, it is whatever's most efficient in the conduct of the case. There's no specific rule. What there is, is as a rule, the exhibit has to be admissible.

DENIS RANCOURT : D'accord. Et puis, ma question 22, c'était par rapport à est-ce que les membres du jury voient les livres des autorités?

INTERPRETER: All right. The second question, the second [sic] question was, do the jurors see the books of authority?

LE TRIBUNAL : Non.

INTERPRETER: No.

DENIS RANCOURT : Okay. Mais ils - est-ce qu'on a - évidemment, nous, on explique qu'est-ce qu'on va essayer de prouver donc, on doit dire quel est le test, par exemple, on doit expliquer...

INTERPRETER: Well, obviously, we will explain what is the test....

LE TRIBUNAL : Non, ça, ça vient de moi. Si vous y référez au test, comme vous allez voir - quand je vais parler au jury, ce que vous allez - vous, quand vous faites des représentations, vous

5 et monsieur Dearden, à la fin, vous allez leur -
argument - donner une argumentation basée sur la
preuve, qu'est-ce qui sont les faits que vous ou
- et ce que vous, les parties, voulez qu'ils
décident, basée sur la preuve, quels faits, est-
ce que ça, c'était fait; est-ce que ça, etcétera.
Vous pouvez faire référence à la loi de façon
accessoire pour être expliquer un point, mais je
vais leur dire que tout ce que vous leur dites,
10 tous les deux, concernant le droit, ils doivent
le - pas en rendre compte si, pour une raison ou
une autre, ce que je leur dis qui est le droit,
s'applique.

15 INTERPRETER: That comes from me, sir. If you
refer to the test, you will see, when I address
the jurors, when you make submissions, you and
Mr. Dearden at the end, you will argue to them,
based on facts, based on what you or
Mr. Dearden or the parties interpret those facts
and was this done, was that done? You can refer
20 to the law, in an accessory fashion, to explain a
point but I will tell them - I will - what both
of you - either of you tell the jurors, as
pertains to the law, they - if for any reason, I
say different, what I say takes precedence.

25 DENIS RANCOURT : Mm-hmm. Parce que mon
intention c'est de utile - de parler du droit
uniquement pour simply want to speak about
organiser la pensée, organiser, visualiser,
30 comment les évidences...

INTERPRETER: Because I the law to organize the
thought process.

LE TRIBUNAL : Okay, mais vous ne pouvez aller à une décision de la Cour d'appel puis dire : « La Cour d'appel a décidé que... »

INTERPRETER: You cannot go to the Court of Appeal decision, for example, and say the Court of Appeal said et cetera, et cetera.

DENIS RANCOURT : Non. Okay, d'accord.

INTERPRETER: No, okay.

LE TRIBUNAL : Vous pouvez pas faire ça, mais vous pouvez - c'est certain que des fois, pour pouvoir expliquer notre point, on doit dire bien, on peut référer à la loi, mais c'est toujours comme aide.

INTERPRETER: Well, it's obvious if you need to explain a point, you can refer to the law but it's always as an aid.

DENIS RANCOURT : Merci. Et ça, c'était ma question 22. Après ça, est-ce que on peut, en présentant ces six copies de documents, est-ce qu'on pourrait, à la place ou en même temps, mettre le document à l'écran pour le montrer?

INTERPRETER: Thank you. That was my question 22. And then can we, when presenting the six present copies, can we also put the document up on the screen to show it?

LE TRIBUNAL : Oui.

DENIS RANCOURT : Est-ce que c'est une option?

INTERPRETER: Is that an option?

LE TRIBUNAL : On va faire - il semblerait qu'on va faire ça avec....

INTERPRETER: Well, that seems what we're going to be doing.

DENIS RANCOURT : Oui? Okay. Donc, on peut faire ça?

INTERPRETER: Yes, we can do that?

LE TRIBUNAL : Oui, on peut. On peut.

INTERPRETER: Yes, we can.

DENIS RANCOURT : Vous avez déjà répondu à 26 l'autre jour. Vous avez dit que on va recevoir une, une copie de ce que vous allez dire au jury pour qu'on puisse faire des argumentations sur...

INTERPRETER: You've already answered 26. You said that we are going to receive a copy of what you're going to say to the jurors so that we make submissions...

LE TRIBUNAL : Oui, c'est ça. C'est toujours mieux des faire avant qu'après là. Donc, on va voir. Si vous avez, tous les deux, des points à soulever que j'ai manqué ou que j'ai mal dit, bien, on pourra en discuter.

INTERPRETER: Yes. Yeah, we always do that before. It's best than after because either party may have points to raise or things that I missed or misspoke - misspoken.

DENIS RANCOURT : Oui.

LE TRIBUNAL : Avant que je - ça, ça va être après votre - normalement, on le fait à un moment opportun, soit juste avant vos représentations ou juste après ou quoi que ce soit.

INTERPRETER: That'll be after. Normally, that would be done at an opportune moment either just before your submissions or right after.

DENIS RANCOURT : Ça, ça, c'était mes questions procédurales.

INTERPRETER: Those were my procedural questions,
Your Honour.

LE TRIBUNAL : Okay.

THE COURT: All right.

5 DENIS RANCOURT : Ah, non, y'en avait une autre
importante. Je m'excuse. Je l'ai oubliée. Y'en
avait une autre question procédurale, très
10 importante que - qu'on vient de me signaler là
aujourd'hui. Moi, je demanderais que les membres
du public puissent avoir accès à l'interprétation
de la langue à travers le principe de la cour
ouverte. Je pense que c'est - le principe de la
15 cour ouverte est très important et normalement,
y'a des, y'a des - y'a la possibilité technique
où les pitons qui sont là, etcétera, pour qu'on
puisse se brancher et entendre l'interprétation
de la langue, si on est pas francophone et
j'aimerais que ça soit disponible au public
cette, cette interprétation-là.

20 INTERPRETER: Oh, there was one important other I
forgot about it, I'm sorry. There's one very
important procedural question that was brought to
my attention today. I would ask that the members
of the public also benefit from interpretation,
25 through the principle of the open courts. I
think that the principles of open court is
important and normally, there are devices,
there's technical - those buttons there, for the
- one can plug in and hear the translation if
30 we're not francophone and I would like that to be
available to the public.

LE TRIBUNAL : Okay, je - non, je rejette cette

demande.

INTERPRETER: No, I'm going to decline that request.

THE COURT: Okay. So, I guess the first, the very first thing because we have - is this issue about interlocutory matters and actions, the relevance of interlocutory motions. So, I suppose I should hear from Mr. - or was it....

LE TRIBUNAL : C'était votre demande?

INTERPRETER: Was it your request?

DENIS RANCOURT : Oui, c'était ma, ma demande.

INTERPRETER: Yes, it was. I'm the one.

LE TRIBUNAL : Vous vouliez que...

DENIS RANCOURT : C'est moi qui...

LE TRIBUNAL : ...exclure les...

DENIS RANCOURT : Oui.

INTERPRETER: Yes.

LE TRIBUNAL : ...ces questions-là?

THE COURT: You wanted to exclude these questions?

DENIS RANCOURT : Bien, je vais expliquer...

INTERPRETER: Well, I'm going to explain.

LE TRIBUNAL : Comme j'ai mentionné hier, ma revue rapide de la jurisprudence semble dire que oui, il y a de la pertinence à ça, relativement aux...

DENIS RANCOURT : Alors, Monsieur le juge...

LE TRIBUNAL : ...dommages donc, je vais vous entendre dessus...

INTERPRETER: Well, like I mentioned yesterday, a quick overview of the case law seems to say that there is relevance to that regarding the

damages.

DENIS RANCOURT : Permettez-moi de - d'être
entendu...

INTERPRETER: Please allow me to speak...

LE TRIBUNAL : Oui.

INTERPRETER: Yes.

DENIS RANCOURT : ...et je vais expliquer mon
point.

INTERPRETER: ...and I'll state my point.

LE TRIBUNAL : Mm-hmm.

DENIS RANCOURT : C'est un, un argument assez
simple. Je vous ai envoyé, par courriel, le -
l'argument en question. C'est, c'est le
document...

INTERPRETER: It's rather a simple argument. I
sent you, by email, the argument in question.

LE TRIBUNAL : Ah, oui?

INTERPRETER: Oh, yes?

DENIS RANCOURT : Oui.

LE TRIBUNAL : J'ai même pas ouvert mon...

DENIS RANCOURT : Ah.

LE TRIBUNAL : ...ordinateur là...

DENIS RANCOURT : Oui.

LE TRIBUNAL : ...parce que j'écrivais mes
motifs. Ça fait que je vais...

DENIS RANCOURT : Okay.

INTERPRETER: I didn't even open my computer
because I was writing my grounds for decisions.

DENIS RANCOURT : Alors, je vous donne une copie
en ce moment. Monsieur Dearden en a déjà une.

INTERPRETER: Well, I'm giving you a copy now.

LE TRIBUNAL : Fait que tout le monde est en même

position. Je suis...

INTERPRETER: So, everybody's in the same position.

DENIS RANCOURT : Est-ce que...

LE TRIBUNAL : Je ne connais absolument rien de qu'est-ce que les gens disent concernant ça là.

INTERPRETER: So, I'm - I know absolutely nothing of what people are saying regarding this.

DENIS RANCOURT : Okay. Donc, mon argument...

LE TRIBUNAL : Je pense que je vais prendre quelques - je pense ça serait probablement plus logique que je jette un coup d'œil à ces deux documents là rapidement, le vôtre et monsieur Dearden, avant qu'on entende ça.

INTERPRETER: So, I think what I'm going to do is, I think it'd be probably more logical that I just check these documents quickly, yours and Mr. Dearden's before we hear anything further.

DENIS RANCOURT : Oui.

CLERK REGISTRAR: Order, please, all rise.

DENIS RANCOURT : Quinze minutes?

INTERPRETER: Fifteen minutes?

LE TRIBUNAL : Oui, je devrais avoir assez d'une quinzaine de minutes.

INTERPRETER: Oh, yes, I should have enough, 15 minutes.

R E C E S S

U P O N R E S U M I N G :

LE TRIBUNAL : Monsieur Rancourt?

INTERPRETER: Mr. Rancourt?

5
DENIS RANCOURT : Oui, Monsieur le juge, y'a quelques - y'a deux petits points de, de mise en ordre avant de commencer là, qui est - que je pense qu'il faut - que j'aimerais adresser. Premièrement, si j'ai bien compris, on a pas encore adressé les demandes de monsieur Dearden, les demandes procédurales encore parce que j'avais des objections à, à...

10
INTERPRETER: Yes, Your Honour. There are some - well, two small items - housekeeping before we go back. First of all, if I understand correctly, we haven't dealt with Mr. Dearden's procedural issues because I had some...

15
LE TRIBUNAL : Non, non, il nous a donné sa liste-là. On va.... Là...

INTERPRETER: No, no, he gave me his list.

DENIS RANCOURT : On va faire ça après?

INTERPRETER: We'll do that later?

20
LE TRIBUNAL : Oui, puis on va faire ces points-là et d'autres, si vous en avez d'autre, mais je pense pas là, mais on va adresser ça après.

INTERPRETER: Well, we'll do those if you have any others. I don't think so. Well, we'll deal with that later.

25
DENIS RANCOURT : Okay, merci. Ça, c'était le premier point puis le deuxième point procédural est le suivant : madame la rapporteur [sic] de la cour m'a signalée, par rapport à mon problème d'obtenir le langage précis de vos raisons, que
30
il est possible d'obtenir les enregistrements de la cour, les enregistrements vocals, uniquement pour mon utilisation, pour mes notes et pour

5 savoir exactement ce qui a été dit et il est possible de faire ça et ça demande une permission de votre part et c'est une permission qui est accordée aux deux parties également et c'est pour pouvoir savoir exactement ce qui est dit...

10 INTERPRETER: Okay. Thank you. That was my first point. Secondly, procedurally speaking, Madam Reporter told me, regarding to get the precise transcript of your reasons, it's possible to get the recording of what was said so that I can make my notes. It is possible to do that and you have to give the permission. It's a permission that's - can be granted to both parties, of course, it's to find out exactly what was said.

15 LE TRIBUNAL : Oui, ce que j'ai dit ce matin dans les deux décisions là, vous pourrez en avoir une copie.

20 INTERPRETER: Yes, what I said this morning in my two decisions, yes, you'll be able to get a copy.

25 DENIS RANCOURT : Merci. Et puis, est-ce que ça serait possible - je, je vais faire une autre demande, est-ce que ça serait possible d'avoir un enregistrement de tout ce qui se passe, comme ça, j'ai pas besoin de m'inquiéter constamment avec le stress des notes et de faire des choses et des notes et de faire des choses. L'autre côté a une équipe entière. Y'a une sténographe qui est là, qui prend des notes en détail. Ça m'aiderait beaucoup de - d'avoir la, la, la sécurité et la confiance de savoir que ce qui a été dit, je peux l'écouter et je peux le revoir...

30

5 INTERPRETER: Thank you. And would it be possible - I'm gonna make another request, would it be possible to obtain a recording of everything that goes on so that way, I don't have to worry constantly with the stress of note-taking, do things. The other side has a whole team. There's a steno there taking copious notes - would help me a lot to obtain the security and the confidence that I can listen to it and go over it.

10 LE TRIBUNAL : Vous voulez dire que vous voudriez, comme, par exemple, avoir la bande sonore à chaque - à fin de chaque journée ou...

15 INTERPRETER: So, you're saying that you'd like to have the audio recording at the end of every day?

DENIS RANCOURT : Bien, je sais pas...

LE TRIBUNAL : C'est ça que vous dites là vous?

20 INTERPRETER: That's not [sic] what you're saying?

25 DENIS RANCOURT : Bien, oui, oui. Madame la, la, la, la reporter de la cour m'explique que les délais et combien de temps ça prend, elle est pas au courant de ça, mais essentiellement, je le demanderais le plus tôt possible. Apparemment, y'a des prix qui ont été fixés. C'est 20 \$ pour la première journée, 10 \$ pour les journées après et ça permet aux parties de vraiment avoir un record, pour leurs notes, pour savoir exactement là s'ils ont oublié quelque chose, s'ils ont manqué quelque chose ou pouvoir revoir...

30 INTERPRETER: Yes, yes. The reporter, Madam

Reporter, explains to me that timelines required for producing transcripts, she's not sure but, of course, I think their price is 20 bucks for the first day, 10 for the next day. So, it allows the parties to get - to add to their details of their notes if they miss something.

LE TRIBUNAL : Peut-être obtenir le protocole là. J'ai pas, devant moi, le protocole là, mais si y'a un - si on a le protocole - y'a un protocole que la Cour a - la juge en chef, je pense, a émis...

DENIS RANCOURT : Oui.

LE TRIBUNAL : ...en concert avec l'administration pour permettre d'obtenir des choses, mais je le sais pas là comment ça fonctionne.

INTERPRETER: Maybe I need to get the protocol. I don't have it in front of me. Can we get a copy of that? There is a protocol that the court has to - the head judge has issued and that has been worked out with the administration to allow certain things but I don't know how that works.

THE COURT: Yes, sir?

DENIS RANCOURT : Mais je, je, je...

MR. DEARDEN: Your Honour...

DENIS RANCOURT : Moi, je, je connais pas du tout le protocole parce que je suis pas dans la, dans la connection...

LE TRIBUNAL : Oui.

DENIS RANCOURT : ...mais je, je demande ça. C'est une demande formelle.

INTERPRETER: I don't know at all the protocol

because I'm not in the heat - in the mix but I'm asking that. It's a formal request.

5 MR. DEARDEN: I don't recall what the protocol is either but I have one concern. If the protocol does say that, yeah, a party can have a daily audio recording of a trial, I'm indicating to Your Honour that you should be aware that Mr. Rancourt and his colleague, Mr. Hickey, sitting in the first row there, they like to blog pretty heavily about what's been going on in this trial and if the protocol says that there can be an audio recording given to Mr. Rancourt, it will solely be for the purposes of him using it for his defence in this trial and will not find its way on some audio clip or blog of Student's-Eye View of Mr. Hickey or Mr. Rancourt's blog. In fact, he shouldn't be sharing it with any third party, would be my submission.

10 THE COURT: Well, conditions....

15 DENIS RANCOURT : Alors, alors, alors, alors, je, je veux...

20 INTERPRETER: So, I want....

LE TRIBUNAL : Les conditions peuvent être - c'est certain...

25 DENIS RANCOURT : Bien sûr.

LE TRIBUNAL : ...que le tribunal...

DENIS RANCOURT : Bien sûr, mais...

30 LE TRIBUNAL : ...peut dire non ou il peut donner - mettre...

DENIS RANCOURT : Mais...

LE TRIBUNAL : ...des conditions, oui.

INTERPRETER: Well, conditions can be - well, we

can say no or impose conditions.

DENIS RANCOURT : Mais là, là, j'ai vraiment un problème, Monsieur le juge, parce que ce que monsieur Dearden vient d'insinuer, c'est que je n'ai - je ne suivrais pas les choses que je viens de vous dire moi-même. J'ai, j'ai dit que ça serait pour moi et pour mes notes et pour le, la cause et aucune autre raison et monsieur Dearden implique de la mauvaise foie de ma part et il me, il me critique pour chaque mot que je dis de travers, d'après lui, et il ose dire ce qu'il vient de dire alors que j'ai l'expérience d'avoir fait un arbitrage du travail où on a eu des, des contraintes comme ça qui ont été suivies à la lettre. Je comprends très bien le *litigation privilege* relié à la, à une, une action et je comprends que si ce, ce privilège est, est pas respecté, que ça des grandes conséquences. Je le sais toutes ces choses-là et donc, je, je, je m'oppose à ce que monsieur Dearden caractérise mes intentions de la façon qu'il vient de faire parce que il veut attaquer des questions de malveillance de ma part, mais il n'arrête pas d'insinuer je - dans cette action, il a souvent, souvent fait ce qu'il vient de faire. Alors, je veux le signaler parce que je trouve ça...

INTERPRETER: Now, I really have a problem, Your Honour, because what Mr. Dearden just insinuated is that I wouldn't assume things that I just told you, that take the responsibility. I told you that it would be for me, strictly, for my notes. So, Mr. Dearden is implying bad faith on my part.

5 He criticizes me for each word that I say, that
is not according to being proper to him. I do
have the experience of having had work
arbitration and I know the principles. I
understand very well litigation privilege related
to a suit and I understand that if this privilege
is not respected, that it has important
consequences. So, I'm against the fact the -
10 Mr. Dearden characterizes my intentions just like
he just did. He wants to attack malice questions
on my part, but he never stops insinuating in
this suit. He's often done just what he did now.
I want to bring that to your attention.

LE TRIBUNAL : Merci. D'accord. C'est noté.

15 INTERPRETER: Okay. I've taken note of that.
Thank you.

DENIS RANCOURT : Oui. Et donc, j'ai fait
l'ordre formelle d'avoir le plus tôt possible, un
accès à cet enregistrement et donc, si on pouvait
avoir un ordre le plus tôt possible, ça - parce
20 que je pense que les reporters de la cour
peuvent pas aller chercher un petit morceau dans
la bande sonore. C'est beaucoup trop de travail.
Je pense qu'ils produisent la bande pour la
25 journée et ils vous la donne sur un, un DVD.

INTERPRETER: Yes. And so, I brought the formal
- formally now request to have, as soon as
possibly, access to this recording. If we could
have an order as soon as possible because I think
30 court reporters cannot go get a part in the audio
recording. I think they produce it for the day
and they give it to you on a DVD.

LE TRIBUNAL : Ouin, laissez-moi vérifier ça là.

INTERPRETER: Well, let me check that out.

DENIS RANCOURT : Merci. Alors, donc, j'ai fais
ma demande et je viens d'apprendre cette
possibilité juste ce matin. Alors, c'est pour ça
que je fais cette demande uniquement ce matin.

INTERPRETER: Okay. Thank you. So, I've made my
request and I just found out about this
possibility this morning. That's why I'm
bringing this request only this morning.

LE TRIBUNAL : Bon. Est-ce qu'on est prêt à
procéder avec...

DENIS RANCOURT : Oui.

LE TRIBUNAL : ...votre chose?

THE COURT: So, are we ready to keep going?

DENIS RANCOURT : Donc, vous avez eu la chance de
voir mon document, que j'ai intitulé

« *Defendant's voir dire argument, untestable
evidence prejudicial to jury* », qui est daté de
la date d'aujourd'hui, mais que j'ai envoyé par
courriel à la Cour hier, hier soir vers neuf
heures, vers 20, 21 heures. Ce document contient
uniquement trois pages d'argument et aussi, en
attachement, une décision du juge Kane de la date
du 26 juillet 2013, dans, dans une motion dans
cette action. C'est par rapport aux coûts et
donc, y'en en attachement, cette décision du juge
Kane. Alors, voici en gros mes arguments, tels
qu'ils sont présentés dans son document - dans ce
document. C'est que monsieur Dearden, j'admets,
a raison que le, le, le comportement peut être
pertinent à la malveillance. Ça, j'ai pas de

problème avec ça, mais la, mais le, le problème avec lequel où je me - auquel je me heurte, est le suivant : il faut que ce comportement-là, c'est une question de droit. Il faut que ce comportement-là est un lien quelconque à la malveillance. Il faut que ça soit raisonnable. Il faut que y'est - c'est une question de droit. Il faut que y'est un lien. Il faut que ça soit plausible de dire que tel comportement est une évidence qui soutient la malveillance. Il faut que ça soit que des comportements qui, comme question de droit, peuvent être considérés comme pertinents, pertinents à la malveillance. Il faut que ça soit pertinent à la malveillance. C'est - il, il suffit pas de dire : « Ah, tous les comportements, je vais nommer tous les comportements. » Si ils sont pas pertinents à la malveillance, juste de les nommer devant le jury, ça donne au jury l'impression implicite qu'ils sont pertinents à la malveillance, mais c'est une question de droit à savoir s'ils le sont et c'est ce que je demande, c'est que, Monsieur le juge, vous fassiez cette question de droit là par rapport à certaines des choses que monsieur Dearden veut faire. Par exemple, si monsieur Dearden veut donner au jury cette grande liste de tous les motions que j'ai pu faire, il en a fait neuf ou plus. J'en ai fait un peu plus que ça, plus des appels à différentes cours et des demandes et des demandes d'aller en appel, des demandes de permission d'appel, j'ai fait des - ces choses-là pour obtenir mes droits

procédurals, c'est vrai. Si il veut simplement dire - nommer le, la, la quantité de choses, hors procès, nommer la quantité d'argent qui a été ordonné payé pour ces procédures-là, ces, ces choses, en soit, ne sont pas pertinentes à la malveillance. C'est ça mon point, mais ça peut induire le jury en erreur, surtout quand c'est dit avec conviction par un avocat qui a beaucoup d'expérience et qui a beaucoup de - qui a un haut statut, ça peut influencer le jury. Donc, y'a une question de droit importante ici. Par exemple, il est pas vrai qu'en soit d'amener une motion, en soit, c'est de l'évidence admissible pour la malveillance. On a le droit d'amener des motions de procédure. C'est pas une évidence en soit qu'on a perdu la motion et que des coûts sont ordonnés contre nous. Pas, en soit. Donc, de dire que y'a eu des coûts, de dire que y'a eu, à toutes ces fois-ci, des coûts ou de dire que y'a eu tant de coûts. Ce n'est pas, en soit, pertinent à la malveillance comme question de droit, mais si monsieur Dearden veut prendre un cas, un événement particulier de malveillance et il veut dire : « Voici ce qui s'est passé. Regardez ce qui s'est passé pendant le tribunal. » et, et que ça passe le test que ça peut être de l'évidence, question de droit de malveillance, bien sûr que j'accepte ça, qu'il le présente, mais ensuite, il doit accepter que je vais répondre à cette même évidence-là. Il va la présenter à travers un témoin. Il va la présenter devant le [sic] cour cette évidence-là,

à travers un témoin et je vais pouvoir répondre en examinant ce même témoin, en parlant de cet - de ce document. Il faut que la - les évidences de malveillance puissent être testées, puissent être vérifiées. C'est - ça me semble un critère important parce que c'est la plaignante qui a le fardeau de la preuve vis-à-vis de la malveillance. La malveillance, qui voudrait que j'avais un motif inacceptable pour bloquer, ça, c'est la malveillance qui peut enlever ma défense *fair comment* et c'est la plaignante qui a le fardeau de la preuve vis-à-vis de cette malveillance-là. Et donc, je dois pouvoir tester les évidences qui sont mis de l'avance pour toutes les prétentions qu'il y a eu malveillance en quelque part. Le, le, le - la, la, la preuve doit être subie à un test. Par exemple, monsieur Dearden - moi, je peux expliquer. Je peux donner de la contre-évidence et expliquer cette motion-là. Je l'ai fait pour telles raisons. Y'avait pas de malveillance. J'avais telles préoccupations et j'ai fait cette motion-là pour mes, pour mes droits procéduraux. C'est pour ça que j'ai fait cette motion. Je peux contrer l'évidence comme ça en plus d'examiner quand on la met en évidence. Donc, c'est ça, c'est ça ma préoccupation. Dans mon, dans mon document - donc, donc le jury ne peut pas décider si une motion est de l'évidence pour la malveillance sans savoir en quoi c'est de l'évidence pour la malveillance. Par quel mécanisme? Par quel cheminement de la pensée est-ce que d'avoir mis

cette motion est un [sic] évidence de malveillance? N'est-ce pas? Et si il y a une telle motion, qui n'est pas un évidence acceptable pour la malveillance ou qu'il y en est 10 ou qu'il y en est 15, ça change rien. Faire 10 ou 15 motions, qui chacune ne sont pas des évidences pour la malveillance, c'est pas parce que y'en a eu plus que soudainement...

INTERPRETER: Yes. So, you had the opportunity to go over my document called "Defendant's *voir dire* argument" in English, dated today's date, but sent by email to the Court last night around 2100 hours. This document only has three pages of arguments and also an attachment, a decision from Justice Kane from the 26th of July 2013 in a motion within this suit. So, it's regarding damages. So, it's an attachment. So, this is from Justice Kane. So, this is in essence, what my arguments are. So, Mr. Dearden, I admit, is right when the behaviour can be relevant to malice. I don't have a problem with that.

Here's where I have an issue. This behaviour, it's a question of right of law, has to have a link somehow to malice. It has to be reasonable. It's a question of law. There has to be a link. It has to be plausible to say that such and such behaviour is proof that there is malice. It needs to be only behaviours that, that as a question of law can be considered as relevant, relevant to malice. It needs to have a relevance to malice. You can't just say, "Oh, all the behaviours - I'm gonna name all the types of

behaviours." If they're not relevant to malice, just to name them in front of the jury, it gives the jury the implicit idea that they are relevant to malice but it's a question of law whether they are or not. That's what I'm asking you to do, Your Honour, that you deal with those questions read as to what Mr. Dearden wants to do. Is it relevant or not? For example, let's say Mr. Dearden wants to give to the jury this copious list of all the motions that I might have done. He did nine or more, I did a bit more than that plus a few appeals to different courts and leave for appeal, more than once, I did that to go in line with my procedural rights. If he just wants to name the quantity of things outside of the trial, quote the amount of money ordered to be paid for these procedures, these things, in themselves, do not show relevance to malice. That's my point. It can lead the jury members astray to errors. It's said by someone, a lawyer with a lot of experience, and is well seen in the field and that can influence the jury and there's an important question of law here. For example, it's not true that, in itself, bringing a motion, in itself, is evidence, admissible evidence for malice. One has a right to bring motions within the procedures. It's not evidence in itself that one lost a motion and that costs are ordered against us, not in itself to say then that there were costs that every time there were costs or there were costs of such and such an amount. Of itself, that type of information is not relevant

to malice, but let's say Mr. Dearden wants to take a case, a particular case related to malice and then he wants to say here's what happened. Here's what happened during court in front of the judge and it does go through the test that it can be taken as evidence, legally, evidence of malice that it's relevant. He can present that but he has to accept that I will reply to that type of evidence. He will present it through a witness in front of the Court and I'll be able to reply by examining - cross-examining that witness relating to that document. Those instances of malice must be tested, must be put through a verification. It seems to me an important criterion because it's the plaintiff who has the onus, burden of proof, regarding the malice. Malice that would want you to believe that I had an unacceptable grounds for blogging, that would be malice that could do away with my fair comment defence and burden of proof is with the plaintiff regarding that malice. So, I must be able to test the evidence that is brought forward for every pretended or suggestions that there was malice in one way or another. So, there must be a test applicable that I can apply. For example, let's say I can explain, I can give counter evidence to explain why I did that motion. Here's the reason. There was no malice. I was preoccupied for - by this and that. Within my procedural rights, I brought this motion. I can counter the evidence in such a way and on top of that, I can put it through a strict test when I

5 then examine. So, in my document - so, so the jury cannot decide if a motion is evidence for malice without knowing how is it, by which mechanism; how through, in their minds, their way of thinking can it be construed as evidence of malice? Isn't that right? If there is such a motion, that is not acceptable for evidence of malice, there'd be 10 or 15 motions. It doesn't change a thing. Whether you have 10 or 15 motions that neither - not - there's not one that's evidence for malice...

10 LE TRIBUNAL : Mais je pense - vous avez fait votre point.

INTERPRETER: No, no. You've made your point.

15 DENIS RANCOURT : Okay.

LE TRIBUNAL : Je comprends.

INTERPRETER: That's fine.

DENIS RANCOURT : Merci. Et...

20 LE TRIBUNAL : Le fait d'amener une motion, en soit même, vous dites, n'est - ne prouve absolument pas de la malveillance.

INTERPRETER: The fact of bringing a motion in itself, you say proves absolutely in no way that there's malice.

25 DENIS RANCOURT : Exacte. Exacte. Mon autre point c'est que chaque élément de preuve de malveillance doit être fait individuellement. On peut pas aller à l'emporte-pièce dire : « Y'a eu tant de motions et toutes ces motions-là que y'a eues, on été perdues. » On peut pas aller à 30 l'emporte-pièce simplement énoncer des choses comme ça en prétendant que ce n'est pas correct.

Même si on dit pas - même si on fait pas l'argument explicite que c'est de la malveillance, juste de le dire, c'est ça l'implication avec le ton qu'on le dit, etcétera. Donc, je veux que ça ne soit pas permis de faire des énoncés à, à l'emporte-pièce sans tester cette évidence-là. Et parce que monsieur Dearden veut utiliser la fausse présomption qu'une motion ou d'aller en appel ou d'être ordonné à faire des coûts, il veut, je pense, utiliser cette fausse présomption comme si c'était de l'évidence de malveillance et il y a plusieurs raisons dans mon argument, au paragraphe 7, que ce n'est - ce n'est pas de l'évidence de malveillance. Par exemple, le point A au paragraphe 7, il n'y a pas eu de pénalité économique envers la plaignante. Alors, on parle des coûts qu'on a ordonnés contre moi, mais le jury doit savoir qu'il n'y a pas - si le jury veut évaluer cette donnée des coûts, en toute justice avec toutes [sic] les faits, le jury doit être informé que l'Université d'Ottawa paye entièrement les frais de la plaignante. Donc, la composante, la composante que, que y'a un coût qui est une pénalité et que c'est donc relié à la malveillance, c'est impossible de - que le jury puisse l'apprécier complètement sans savoir que en faite, il n'y a pas eu de pénalité financière envers la plaignante, aucunement. Il n'y en aura jamais. L'université a, a dit, sous serment, Allan Rock a dit sous serment que cette action était financée *without a cap*. Ce sont ses mots. Et donc, comment est-ce que le jury peut

apprécier - comment est-ce que le jury va recevoir de l'information que y'a eu des coûts et que donc que y'a un mal qui a été fait sans savoir que non, du point de vue financier, y'a pas eu de mal qui a été fait. Et ça, c'est un exemple d'une place où je dois pouvoir dire que l'université paye les frais, que y'a pas de pénalité financière envers la plaignante. C'est une place, sans faire mon argument que vous avez exclu, que je comprends très bien, je dois pouvoir répondre si monsieur Dearden veut avancer que les coûts sont une pénalité, je dois pouvoir répondre que dans cette action, il n'y a pas de pénalité financière envers la plaignante. Et donc, je, je sou mets ça, Monsieur le juge, et je sou mets - je, je demande votre considération par rapport à mon droit de réponse de cette façon-là, vis-à-vis une évidence comme celle-là que monsieur Dearden pourrait mettre de l'avant.

INTERPRETER: Exactly. Exactly. My other point being, each element of evidence of malice must be done individually. You can't go, just like that, and say there were so many motions and all those motions that incurred were lost. You can't just willy-nilly or in a, in a general statement make that type of statement. Even if you don't say it's malice, just saying it, you're implying it with the tone used when you relate this, of course. So, I don't want it to be allowed, that type of statement that is done as a general statement, without the evidence being tested - that I have a chance to test the evidence. Mr.

Dearden wants to use the false suggestion that a motion or to go on appeal or to be ordered to pay costs, he wants, I believe, use this false assumption that this would be proof of malice. There's several reasons in my argument. Paragraph seven, that is not evidence of malice. For example, look at paragraph 7.A. There wasn't economic penalty towards the plaintiff. We're talking about costs ordered against me but the jury must know, if the jury wants to evaluate this data about the costs in all justice - with all the facts, the jury must know that you evoke this - all of the plaintiff's costs. So, that part, that there's a cost, there's a penalty that therefore it's related to malice, it's impossible for the jury to fully understand that without knowing that, in fact, there was no financial penalty towards the plaintiff, not at all. There won't ever be because the university has sworn, under oath, that this suit was financed without a cap. Those were his words. So, how can members of the jury - how are they going to receive information that there were costs? So, there was wrong-doing, without knowing that.... No, there was no wrong-doing, financially speaking. So, that's an example of an area where I must be able to say that university pay, pays the costs and there's no financial penalty towards the plaintiff. So, this is an area, without bringing my argument that you excluded, that I understand very well, I must be - have the right to respond, to reply if Mr. Dearden wants to submit that the

costs were a penalty, I must be able to reply that there was no financial penalty to the plaintiff. So, I am submitting that, Your Honour, and I'm asking that you consider that. That is my right of reply regarding that type of evidence that Mr. Dearden might choose to put forward.

LE TRIBUNAL : Merci.

INTERPRETER: Thank you.

DENIS RANCOURT : Et donc, les autres évidences dans ce même paragraphe, qui montrent que la présupposition qu'il y a malveillance à cause de ces choses-là, n'est, n'est - est fausse et la - sont les suivants : tous [sic] les motions que j'ai fait, ont été faits en *management* de la cause; ont été faits en gestion de la cause et à chaque fois que j'ai voulu mettre de l'avant une motion, le juge Smith m'a dit : « Attendez, c'est quoi cette motion? », etcétera. Il a bloqué une ou deux motions et il a admit tous les autres qui sont allées de l'avant. Celle qui, qui, qu'il a, qu'il a bloqué, on en a parlera pas parce qu'elles sont pas dans, dans les choses que proposent monsieur Dearden, mais la, la - pas plus qu'une, je crois, est une, une - juste une motion qui a - qui avait été bloquée, de mémoire, mais la - le point est que les motions qui ont été mis de l'avant, ont été mis de l'avant à travers le filtre d'une gestion de la cause, qui avait été où j'avais consenti à cette gestion de la cause-là et les motions que monsieur Dearden a faits avant qu'il y ait gestion de la cause,

5 c'est entièrement lui. Il faisait toutes les motions. Donc, le point de gestion de la cause, là, je suis en train d'expliquer, Monsieur le juge, les raisons que présupposé que y'a malveillance à cause que y'a eu des motions, c'est faux. Mon, mon troisième...

10 INTERPRETER: So, the other evidence then in this same paragraph, showing that the pre-assumption that there is malice because of that, is false and here's why: all the motions that I brought about were done in case management. They were there to manage the case. Each time that I wanted to submit a motion, Justice Smith told me, "Wait, what is this motion, all this?" And he quashed one or two motions and put ahead all the other ones. The ones that he quashed, we're not gonna talk about. They're not in the matters that Mr. Dearden is suggesting, not more than one, I believe. Just one motion that had been -

20 had been quashed, from what I recall, but the point is the following, the motions that were submitted, were done so through the filter of case management who - where I had consented to case management and the motion that Mr. Dearden did before case management, he was the one that was doing all the motions. So, the point is case management. So, what am I explaining now? Well, I'm explaining the reasons that - assuming that there was malice because a motion is false, I've understood that point. So, the fact of bringing

30 a motion in itself, is not...

LE TRIBUNAL : Puis je pense pas - je le sais

pas. Peut-être qu'on devrait écouter maître Dearden puis vous pourrez peut-être répliquer parce que je pense pas que c'est ça son argument. Je pense pas que c'est le fait d'amener une motion. Il...

INTERPRETER: Well, I don't think so. Maybe we should listen to Mr. Dearden. Maybe you'll be able to reply. I don't think that's his argument. I don't think it's a fact that - of bringing about a motion.

DENIS RANCOURT : Non.

INTERPRETER: No.

LE TRIBUNAL : ...cible, lui, certaines choses que vous avez dit. Il veut me convaincre que ça, c'est pertinent à la question des dommages et puis que ça - que c'est au moins capable, que je dois décider - parce que je dois décider si c'est capable de s'appliquer à la malveillance, mais je vais entendre là - je peux pas préjuger quoi que ce soit à ce que maître...

DENIS RANCOURT : Oui.

LE TRIBUNAL : ...Dearden va me dire. Ça fait que vous, vous argumentez, écoutez, comment peut-on, de façon générale, dire j'ai amené - y'a amené 18 motions puis à cause de ça, c'est de la malveillance, etcétera. C'est - ça, je comprends ça, mais il faut donc regarder ce qui va lui dire que vous avez fait...

INTERPRETER: It's possible that there are certain things that you said that he wants to convince me that, that is relevant to the question of costs or damages, that at least

5 that's - that is - I need to decide whether -
whether it can be applied to malice but I will
hear now - I don't want to jump ahead and guess
what Mr. Dearden's gonna say but you're arguing
that how can we, in a general way, I brought
forward 18 motions and because of that, it's
malice and all that. No, I understand that.
Now, what we need to do is what he's going to say
that you did.

10 DENIS RANCOURT : Oui. Mais je vais quand même
finir quelques points...

LE TRIBUNAL : Okay, d'accord.

15 DENIS RANCOURT : ...juste quelques points parce
que j'ai presque fini. Le point additionnel à
celui que vous venez de, d'expliquer, Monsieur le
juge, vous avez parfaitement raison, mais le
point additionnel est le suivant : moi, je
voudrais que monsieur Dearden soit empêché de
faire des énoncés à l'emporte-pièce avec un ton
qui implique - sans me dire explicitement puis
20 y'a quelque chose de mal là-dedans. Vous voyez
ce que je veux dire? Parce que en argument, il a
fait ça constamment dans, dans les motions qui
ont été devant nous avant.

25 INTERPRETER: Well, I, nevertheless, will finish
with a few of my points. I'm just about done.
Additional point that - to the one you just, you
just explained. You're absolutely right but the
additional point is the following: I would like
30 Mr. Dearden be - not be allowed to make comments
just off the cuff, without implicitly saying that
there's something wrong with that. See what I

mean? Because in arguing the motions, he did that constantly.

LE TRIBUNAL : Donc, puis là, vous parlez de son - dans son discours d'ouverture là?

INTERPRETER: So, you're, you're talking about his opening comments, right?

DENIS RANCOURT : Oui. Et aussi, quand il va questionner les témoins, etcétera...

INTERPRETER: Yes. Also, when he's going to examine witnesses, et cetera.

LE TRIBUNAL : Bien, quand qu'il questionne, il pose une question puis c'est la témoin qui va dire...

DENIS RANCOURT : Oui.

LE TRIBUNAL : ...à tel et tel temps...

DENIS RANCOURT : D'accord.

LE TRIBUNAL : ...la personne a dit telle, telle chose...

DENIS RANCOURT : Oui.

LE TRIBUNAL : ...mais là, j'étais...

INTERPRETER: Well, when he examines, he asks a question and the witness is going to say such and such a time, the person said such and such a thing. Yes.

DENIS RANCOURT : Donc, c'est dans l'énoncé d'ouverture, effectivement, Monsieur le juge, et, et dans l'énoncé de fermeture aussi, où on, on explique nos arguments.

INTERPRETER: Okay. So, it's in the opening remarks, Your Honour, and in the closing arguments.

LE TRIBUNAL : Oui, oui, on va s'y rendre là.

On...

DENIS RANCOURT : Oui.

LE TRIBUNAL : ...aura plus d'information que où
- qu'est-ce qu'on a à ce moment-là.

INTERPRETER: Yes, okay, we'll get there, yes.
We'll have more information than what we have
now, at that time.

DENIS RANCOURT : Plusieurs des motions que
monsieur Dearden avait mis dans sa grande liste,
sont des motions qui ont été réglées en ma
faveur, en partie. C'est à dire, on a - j'ai,
j'ai essayé des, des régler...

INTERPRETER: A lot of the motions that
Mr. Dearden had put in his long list are motions
that had been dealt with in my favour, partially.

LE TRIBUNAL : Non, non, mais là, vous revenez à
votre point là.

INTERPRETER: Okay, so you're coming back to your
point now.

DENIS RANCOURT : Oui.

LE TRIBUNAL : Je veux dire c'est pas le fait
d'amener une motion.

DENIS RANCOURT : Oui.

LE TRIBUNAL : En tout cas, je vais entendre
maître Dearden et...

INTERPRETER: Okay, motion, yes, yes, I know.
And anyway, I'll hear you.

DENIS RANCOURT : Et l'autre, l'autre - le
dernier point qui me, qui me chicotte et que
j'aimerais avancer est le suivant : monsieur
Dearden va avoir le droit d'essayer de mettre les
motions comme de l'évidence de malveillance, mais

le juge Kane a clairement dit - a trouvé dans sa décision que je cite ici, que en faite, la plaignante pousse un peu les choses et le juge Kane dit...

INTERPRETER: Okay, so, the other one, the last point that bothers me and that I'd like to put forward is what follows, Mr. Dearden will have the right to try and put the motions forth as evidence of malice but Justice Kane clearly said, in his ruling, that I'm quoting here that in fact, the plaintiff is pushing matters a bit and Justice Kane...

LE TRIBUNAL : Oui, j'ai lu. J'ai lu.

DENIS RANCOURT : Vous l'avez lu?

LE TRIBUNAL : Lui a réduit les dommages - les dépends...

DENIS RANCOURT : Oui.

LE TRIBUNAL : Pas les dommages, mais les dépends parce que...

INTERPRETER: I read it. Yes, I read about the - the costs because...

DENIS RANCOURT : Oui, et il - parce que y'avait - à - d'après lui, bien, ses mots précis sont les suivants : « *This is...* » Il, il vient de dire que y'a un, un abus - il a pas utilisé le mot « abus », mais il vient de dire que on essaye d'examiner une témoin, qui va être une témoin au procès puis c'est pour ça que vous faites ça puis il dit...

INTERPRETER: Yes, why because it was - according to him, there were - well his exact words are as follows in English. He just said that, that

there is - there's an abuse. He didn't use "abuse" as a word, but he just said that we're trying to examine a witness who will be a witness at trial. That's why you do that. And here's what he says...

DENIS RANCOURT: "This is clearly one of or the central purposes of this cross-examination. It is one of many causes of delay in getting this action onto trial, thereby leading to more motions and additional costs."

DENIS RANCOURT : Donc, il dit ce que la plaignante fait est une des raisons qu'il y a des motions et qu'il y a un, un recul. Et ça, c'est une, un, un, un, une trouvaille de faits, je pense, du, du juge Kane, qui nous a entendus par rapport à ces points-là où on a - où on a parlé de, de, de nos motions. Donc, je voulais signaler ça parce que ça, ça, ça équilibre un peu les perceptions, si vous voulez. Donc, donc, je, j'ai déjà dit ce que je demandais puis j'ai déjà expliqué mon point et je vais maintenant entendre monsieur Dearden.

INTERPRETER: So, he says what the plaintiff is doing is one of the reasons why there are motions and that there is a drawback and this is what Justice Kane heard when we spoke in front of him about our motions. So, I wanted to underline that. Why? Because it puts perceptions in balance a bit, if you want. So, so I already said what I was asking. I've already explained

my point and now, I'm ready to hear Mr. Dearden.

LE TRIBUNAL : Merci.

INTERPRETER: Thank you.

THE COURT: Yes, Mr. Dearden?

MR. DEARDEN: Yes, Your Honour.

SUBMISSIONS BY MR. DEARDEN:

MR. DEARDEN: On that last point, Your Honour, I want to put on the record that in terms of what Justice Kane ruled in paragraph 17 to 19 that my point of examining Ms. Gervais on matters, factual matters was going to the weight of the evidence that she should be given to her affidavit, which was put forth by Mr. Rancourt to - in his submission, a claim that Professor St. Lewis made false sworn statements in her pleadings and in her examination for discovery about the date that she met Ms. Gervais and that's why we got into detailed facts, as well as the other matters, which were totally relevant to that cross-examination. On my - Your Honour, you have my factum and I'll be brief. The first point, Your Honour, is that the defendant's post-publication conduct, up to and including the jury's verdict, is relevant to three issues in the libel action: malice, aggravated damages and punitive damages and I set that out in paragraph 8 to 11 of my factum and primarily, we rely on the Hill and Church of Scientology case and our submission is, during the past three years of this litigation, Professor St. Lewis has had to

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endure through the almost 30 motions that occurred during this trial; 21 of them filed by Mr. Rancourt, nine by Professor St. Lewis, and in my submission, those nine were filed because of his conduct. He refused to answer. And most of those are refusals, which he was ordered to answer when we brought those motions. So, you're being completely misled when he says we brought nine. Yeah, we brought nine because he refused to play by the rules. So, throughout that three years, Your Honour, Professor St. Lewis has had to endure attacks on her through factum, written submissions, pleadings, as in notices of motion and the defendant's affidavits, all publicly filed in this court's files. All public. She endured all this with people from the public, including Mr. Rancourt's supporter, sitting in the audience, when he made submissions like she made false sworn statements. That's what I'll say was the circus of Professor St. Lewis' life the past three years going through all of these motions and listening and enduring in silence to what Mr. Rancourt...

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DENIS RANCOURT : Monsieur - objection, Monsieur le juge. J'ai l'impression que monsieur Dearden est en train de faire des arguments, qui devraient être faits au jury, par rapport à des choses spécifiques. Je comprends pas pourquoi, parce que ce, ce genre d'argument qu'il est en train de faire est préjudiciable contre moi. À, à vos yeux, Monsieur le juge, il est en train de faire un argument auquel c'est même pas pertinent

que je réponde parce que c'est pas la question
qui est devant nous. Alors, je trouve ça...

DENIS RANCOURT: I object, Your Honour. It's my
impression that Mr. Dearden is presenting
arguments that should be done to the jury
regarding specific topics. I don't understand
why this type of argument that he's bringing -
doing is biased against me. In your eyes, Your
Honour, he's bringing an argument. It's not even
relevant that I answer, that I reply. It's not
the question that, that we're dealing with. He's
arguing why I think....

LE TRIBUNAL : Non, mais il argumente pourquoi -
non, je pense que - on va - on va le laisser
continuer là. On va voir où est-ce que - où ça
va là.

INTERPRETER: Well, let's let him continue, see
where he's heading with this.

MR. DEARDEN: Your Honour, that interjection
shows that Mr. Rancourt does not have any idea
what malice means in a libel action. Professor
St. Lewis intends to testify about the three
years of hell that she went through in the way he
conducted his defence and that was one of them.
What she had to endure in silence with him saying
statements that she's going to give evidence
about. So, you're - you know, he kept on saying,
you know, filing a Notice of Motion isn't malice.
Well, of course, it isn't. Didn't say it was.
I'm saying that you're - Mr. Rancourt's never-
ending motions and appeals up to the Supreme
Court of Canada, twice, delayed one of the major

5 remedies that Professor St. Lewis is seeking in this case and that's an injunction to make him take down his defamatory box but also the stress that she has to endure to finally get to her day in court tomorrow. Over three years. That's stressful.

10 THE COURT: But you'll get to that - at first blush, the simple fact of bringing an appeal - let's forget what is said during - what - the fact of bringing an appeal or the fact of bringing a motion, you have to convince me that that, of itself - because there's twenty motions compared to ten or five or three, constitutes necessarily, malice, which I should put to the jury.

15 MR. DEARDEN: No. It's the evidence that Professor St. Lewis is going to give as examples of what this defendant did through the three years to get here.

20 THE COURT: Yes, okay. Well...

MR. DEARDEN: So, for instance...

THE COURT: ...if during those...

MR. DEARDEN: Yeah, during.

25 THE COURT: Okay. Not the fact of bringing the appeal or not the fact of bringing a motion.

30 MR. DEARDEN: There would be one example of an appeal, Your Honour, where the first - when the bogus bias allegations were made against Justice Beaudoin, the defendant appeals directly to the Supreme Court of Canada. He seeks leave to the Supreme Court of Canada. I had wrote him a letter two days before to say the exact case law

from the Divisional Court and the Court of Appeal that says, "No, no, you can't do that. You've gotta seek leave again to get - to try to appeal what just happened. You can't go directly to the Supreme Court of Canada." Justice Smith told him that that day, but of course, he ignores us and goes directly up. That was a complete and utter waste of time to go there. So, that would be an example whether Professor St. Lewis is gonna refer to that, I doubt, but - 'cause it's more - it's exact - not more. It is what did he do? What did he do during particular motions? For example, Your Honour, and you've - you went through this. The proxy. Okay? Think about this. After the unequivocal findings of fact made by Justice Smith, that the motives were proper, unequivocal, findings of fact that the motives were proper and this action was about Professor St. Lewis' reputation, this defendant, a couple of days before the jury is gonna start hearing evidence and after the jury is selected, submits that she's a proxy for U of O. Your Honour, the plaintiff is a lawyer. That is saying that she filed a Statement of Claim under false pretences. It's preposterous. It's outrageous that he would make that submission about a lawyer, in particular. That she - that - she didn't file that claim on her own behalf. She filed it for a proxy. In the face of what Justice Smith held, it's mind-boggling to me. He...

DENIS RANCOURT : Monsieur le juge...

MR. DEARDEN: No. I wish he would...

DENIS RANCOURT : ...objection.

INTERPRETER: Your Honour...

LE TRIBUNAL : Non, non.

DENIS RANCOURT : Objection.

LE TRIBUNAL : Non, non.

THE COURT: You'll reply.

DENIS RANCOURT : Mm-hmm.

LE TRIBUNAL : Vous répondrez. Prenez des notes puis répondez en réplique.

INTERPRETER: You will reply. Take notes and then you will have your chance to reply.

DENIS RANCOURT : D'accord.

DENIS RANCOURT: Okay.

MR. DEARDEN: So, attitude, Your Honour, the reckless and callous disregard for a plaintiff's feelings in a libel action by a defendant is all relevant, all of it, and we gave you some examples - other examples, Your Honour, and if you turn up, please, the factum at paragraph 21, for instance, 21 is in this Mireille Gervais motion that Mr. Rancourt brought that he wanted to reopen the examination for discovery of Professor St. Lewis, based on Gervais' affidavit. He said twice in the factum that he filed, that Professor St. Lewis repeatedly made false sworn statements. And I've reproduced them in paragraph 21. He's saying that about a lawyer, about her recollection of the date of the meeting. He doesn't care what he says. He says anything. He'll say anything. So, a lawyer made false sworn statements. The lawyer's the proxy

for University of Ottawa even though Justice Smith and all the way up to the highest court in the land, said that's not so. The insensitivity and callous disregard for Professor St. Lewis' feelings aggravates her damages, Your Honour. The 30 motions that had to be defended or filed in this libel action caused significant distress to Professor St. Lewis and that goes to aggravated damages and punitive damages. He's labelled his factum untestable evidence prejudicial to the jury. He cites no authorities, Your Honour. You asked him yesterday if he was going to, but he didn't. No authority to counter the trite legal principle that a defendant's conduct, from the time of publication to the jury verdict, is relevant and he couldn't cite any authorities because none exist. And by the way, I warned him, from the earliest days and repeatedly thereafter, your conduct, Mr. Rancourt, is relevant to malice, aggravated damages and punitive damages and basically every time I did that, I got, "Stop wasting my time." Okay? Don't tell me that - during examination for discovery, "You're wasting my time. Stop telling me that." And last night, what's he do? He serves a factum, claiming that if the jury learns about his conduct, it would be prejudicial. How ironic is that? Yeah, because he was warned not to do this, to not display this kind of conduct and he just barrelled right through and didn't care and the jury, in my respectful submission, is entitled to know from

5 Professor St. Lewis that the impact on her, of
what he said, orally or in writing, during one or
more of those 30 motions. Subject to any
questions Your Honour has, that's my submissions
on...

THE COURT: Thank you.

LE TRIBUNAL : Bon, là, vous pouvez répliquer à
certains points qui ont été soulevés, monsieur
Rancourt.

10 INTERPRETER: So, now, you can reply to certain
points that have been brought up.

DENIS RANCOURT : Bien, puisque toutes [sic] les,
les points ont, ont été permis, je, je, je vais,
je vais...

15 INTERPRETER: Well, just about all the points
were allowed, I will...

LE TRIBUNAL : Non, y'a - vous pouvez répliquer
là. C'est ça je voulais dire. Bon.

20 INTERPRETER: No, you can reply. That's what I'm
allowing you.

25 DENIS RANCOURT : Vous avez entendu de la part de
monsieur Dearden, qu'il veut effectivement dire
qu'il y a eu 30 motions. Il veut mettre ça en
évidence. Juste 30 motions, que le fait que y'a
eu 30 motions, ça fait causer - en voulant dire
que c'était malveillant parce que j'ai voulu
causer de la, de, de, de, du stress. Je pense
que de dire une telle chose, ça ne rencontre pas
le test évident, que ça ne peut pas être une
30 évidence admissible pour malveillance de dire
que, vu que y'a eu 30 motions, dont neuf sont de
la plaignante et je pourrais, moi, de mon côté,

donner des exemples de ces neuf motions-là, à quel point elles étaient exagérées et je pourrais faire en écho ce que le, le juge Kane a observé. Par exemple, une des premières motions, c'était pour me forcer à aller en *mandatory mediation* avec un, le médiateur de leur choix, qu'il nommait explicitement dans la motion. Heureusement, j'ai pu régler ça puis ils ont, ils ont, ils sont pas allés aussi loin que ça, mais c'était ça la motion. Y'a une autre motion qui était parce que j'avais dit dans un affidavit que j'avais pas beaucoup d'argent et que je pouvais pas me permettre de, de, d'aller à long terme en médiation, en payant la moitié d'un médiateur surtout pas un, à leurs prix, parce que j'ai dit ça, on m'a examiné sur tout [sic] mes finances, tous mes biens financiers et quand j'ai refusé, on a fait une motion de refus pour aller chercher toute cette information-là, que - qui a été accepté et là, on m'a examiné. Donc, la plaignante sait que je n'ai pas d'argent. Elle le sait d'avance. Et, et c'était comme ça, des motions comme ça, une après l'autre, et souvent, des motions à un jour de notice où là, présentez-vous en cour. Vous êtes *self-rep*. Vous avez pas qu'est-ce qui se passe, mais allez *up*, on y va, à un ou - en tout cas, moins que le délai raisonnable. C'était ça les, les, les premières motions avant qu'on soit en *case management* et c'est pour ça, moi, que je voulais aller en *case management*. C'était pour arrêter ces, ces motions très stressantes et qui n'avaient pas

5 d'allure et qui, pour moi, n'avaient pas une
pertinence à la cause vraiment. C'est pour ça
que je voulais accepter d'aller et, et ce type de
motion-là a arrêté une fois qu'on a été en case
management. Donc, pour que monsieur Dearden dise
que ses neuf motions, c'est aussi de, c'est aussi
moi qui les a amenées, c'était - c'est moi qui a
été la cause que lui amène neuf motions, pour
moi, c'est un aberration total d'oser dire une
10 telle chose, mais - donc, c'est dans ce sens-là
que je dis que de, de - il veut que la témoin
dise, « Y'a eu 30 motions qui sont pour des
raisons de malveillance. » Une - par
malveillance, un désir de me faire du mal. C'est
ça qu'il veut argumenter. C'est ça le sens de ce
15 - de l'évidence qu'il veut mettre devant le jury
et moi, je dis, de juste dire ça comme ça, 30
motions, dont neuf sont les siennes, et quand on
connaît pas les détails, on sait pas pourquoi ces
motions et on, on sait rien...

20 INTERPRETER: Okay. You heard from Mr. Dearden
that, in fact, he wants to say that there were 30
motions. He wants to present that as motion - as
evidence, the fact that the 30 motions were
25 there, that's gonna cause malice because I wanted
to cause stress. I think that to say such a
thing really doesn't meet the test, that it
cannot be an inadmissible evidence for malice to
say that 30 motions appeared, nine of whom - of
30 which came from the plaintiff and I could give
examples of those nine motions to which point
they were exaggerated. I could also echo what

Justice Kane observed. For example, one of the first motions was to compel me to go to mandatory mediation with a mediator of their choice, that they would name in the motion. Thankfully, I was able to settle that. They didn't go as far as that but that was the motion. Another motion was because I had said in an affidavit that I didn't have much money and that I couldn't afford to go long term in mediation and paying half of mediation costs, especially not a mediator - what their - it's his or her cause. Because I said that, I was examined under all my finances, all my goods. Because I refused, they wanted to go and get that information. It was accepted that they do that. So, they did go through and check that out. So, the plaintiff already knows ahead of time that I'm impecunious so it were - they were motions, one after the other like that with one day - often one day of notice. You're a self-rep, you have to show up to court, let's go, get up, go. So, in any case, not according to a reasonable timeframe. That's why I wanted to go to case management. We hadn't started case management, yes. That's why I wanted to go in case management. I wanted to put an end to such motions, for me, had no relevance to the case, really. That's why I accepted. So, that type of motion stopped once case management transpired. So, for Mr. Dearden to say that those - his nice - nine motions, I'm also the ones [sic] who brought - the one who brought about the motions, I was the case of him - they're bringing about

those motions. To me, that's preposterous to say something like that. So, it's in that sense that I say he wants the witness say that there were 30 motions that were there for reasons of malice, through malice, maliciously done to hurt me.

That's what he wants to put through as an argument. That's what he wants presented to the jury. And I'm saying to just say that, a broad statement like that, 30 motions, nine of which are his. We don't know.

LE TRIBUNAL : Là, vous répliquez pas. Vous faites votre argument que j'ai bien compris.

INTERPRETER: So, you're not replying here. You're just stating your argument again.

DENIS RANCOURT : Merci. Bien, je, je réplique dans...

INTERPRETER: So, you're not replying here. You're just stating your argument again.

LE TRIBUNAL : Non, mais vous l'avez faite.

C'est la...

DENIS RANCOURT : Oui.

LE TRIBUNAL : ...l'argument que vous avez fait.

DENIS RANCOURT : Oui.

INTERPRETER: I've understood it. Yes, I understood it. You've already brought that argument.

DENIS RANCOURT : C'est monsieur Dearden qui vient de dire que y'a - qui, qui voulait dire que y'avait eu 30 motions, qui voulait que ce témoin témoigne...

LE TRIBUNAL : Oui, oui.

DENIS RANCOURT : ...de ça.

INTERPRETER: Well, Mr. Dearden just said that he wanted to say that there were 30 motions. He wanted his witness to say that and...

LE TRIBUNAL : Oui, oui.

DENIS RANCOURT : Okay.

LE TRIBUNAL : Et puis, je comprends votre argument. Vous, vous dites...

DENIS RANCOURT : Okay.

LE TRIBUNAL : ...on peut pas tout simplement dire ça.

INTERPRETER: Yes, I understand your argument. You're saying that you can't just simply say that.

DENIS RANCOURT : Merci.

INTERPRETER: Thank you.

DENIS RANCOURT : Et l'autre affaire, c'est que, il a dit en argument, que j'avais aucun respect pour les émotions de la plaignante. Comme ça. I a annoncé ça et il - l'évidence qu'il veut amener, c'est que j'ai fait des motions et que aussi, quand j'ai fait mes arguments, j'ai dit certaines choses. Par exemple, dans les jours qui viennent de passer, j'ai argumenté le - que j'avais le droit d'avoir une défense par *proxy*. C'est vrai j'ai argumenté ça, mais c'est dans les *pleadings*. C'est dans mon *Statement of Defence* et j'argumentais pour maintenir mon *Statement of Defence*, pour avoir le droit de faire ce que je pensais qu'on allait faire. Jamais y'a eu une motion pour enlever ces paragraphes-là. Je pensais que j'étais protégé. Je suis époustouflé de savoir qu'à la dernière minute, on peut

enlever cinq ou six paragraphes de mon, de mon *Statement of Defence*, juste comme ça, après quelques heures de - d'argumentation. Je suis époustouflé par ça et donc, j'étais en train d'argumenter que je veux maintenir mes arguments. En quoi est-ce que ça peut être de la malveillance, d'argumenter une telle chose? De maintenir le document qu'on a, qu'on a mis là depuis le début, qui n'a jamais été exclu, qu'on a jamais fait de motion pour l'arrêter, pour dire : « Vous n'avez pas le droit de faire ça. Vous n'avez pas le droit de dire ça. Vous avez pas le droit de rien. » Jamais, jamais, pendant plus de trois ans, puis tout d'un coup, c'est malveillant de vouloir préserver ces paragraphes-là et qui, et, et ce sont des paragraphes qui sont attachés à plus que juste cette *proxy defence* parce que y'a aussi mention de, de, de, de d'autres choses dans ces paragraphes-là. Donc, moi, je voulais préserver ça et c'est pour ça que j'ai argumenté ça. Donc, on, on voit ici un, un autre - l'autre exemple que monsieur Dearden a donné, on avait dit que je pouvais pas aller à la Cour suprême, mais dans mon argument à la Cour suprême, parce que je suis allé deux fois à la Cour suprême et là, monsieur Dearden a parlé de la première fois. Dans mon argument, j'ai expliqué pourquoi j'avais un droit d'aller à la Cour suprême. J'ai fait cet argument-là, un argument légal et monsieur Dearden a écrit au registraire pour lui demander. Vous pouvez même pas accepter - vous avez même pas besoin

5 d'accepter son application parce que c'est
ridicule ce qu'il fait puis on l'a déjà averti.
Le registraire était d'accord avec monsieur
Dearden, m'a renvoyé les documents. Je me suis
plaint et j'ai dit, c'est, c'est inacceptable.
Ensuite, la, l'association des droits civils de
l'Ontario, c'est plaint au juge en chef de la
Cour suprême et a dit, mais il semble ça pas, ça
pas...

10 INTERPRETER: So, the other topic is, in his
arguments, he said that I had no respect for the
plaintiff's feelings. Just like that, he says
that. So, the evidence that he wants to bring
about is that I brought about motions. And also
15 when I made my arguments, I would have said
certain things. For example, for example, in the
last few days, I argued that, that I had, that I
had a right - that I had the right to have a
defence by proxy. Yes, I argued that, but it's
20 in the pleadings. It's in my Statement of
Defence and I was arguing to support my
Statement of Defence, to be given the right to do
what I thought we were going to do. Never was
there a motion brought about to remove these
25 paragraphs. I am just taken aback that - to find
out that, at the last minute, four of five
paragraphs or five or six paragraphs of my
Statement of Defence can be removed. So, I was
taken aback by that. So, of course, my arguments
30 - I will argue that how can that be malice to
want to maintain the document that you filed from
the get go that was never excluded, never was

5 there a motion to stay it, that you don't have a
right to say that. Never was it done in a few
years and all of a sudden, it would be malice if
I'm arguing about that? I'm dumbfounded about
that. There's also a mention of other things in
those paragraphs. I wanted to save those,
preserve those. That's why I argued on that
point. Here's another example that Mr. Dearden
gave. We had said that I couldn't go to Supreme
10 Court but in my argument to the Supreme Court,
because I went twice to the court - Supreme
Court. Mr. Dearden talked about the first time.
In my argument, I explained why I had - it was my
right to go to Supreme Court. I did bring about
that argument. It's a legal argument. And
15 Mr. Dearden wrote to the Court Register [sic] to
ask, you don't even have to accept his
application. It's ridiculous what he's doing.
He's already been warned. The Registrar was in
agreement. Mr. Dearden sent me back the
20 documents. I complained and I said, "It's
unacceptable." And then the Association for the
Civil Liberties of Ontario complained to the
Chief Justice, it makes no...

25 MR. DEARDEN: No. Your Honour, I object. This
isn't reply.

DENIS RANCOURT : Bien, bien sûr. C'est lui.

INTERPRETER: Well, of course, it is.

THE COURT: Well, let - never...

30 DENIS RANCOURT : C'est lui qui a amené ça sur le
tapis. L'association s'est plaint au juge en
chef. Le juge en chef a dit : « On s'en

occupe. » Essentiellement, je paraphrase. Ensuite, le registraire m'a écrit et m'a dit : « Oubliez ce que je vous ai dit. Amenez-moi, amenez-moi vos documents. On les prend. » Et quand que la décision a été prise, c'était avec les coûts normaux, c'est-à-dire, minimum. Y'a, y'a pas eu de - d'indication de la Cour suprême que y'avait eu un abus ou rien comme ça. Y'a aucun signe de ça. Y'avait des arguments légaux pourquoi - et qui étaient détaillés pourquoi je pouvais aller à la Cour suprême, suite à la décision qui avait été prise. Bien sûr que la plaignante est pas d'accord et veut trouver toutes sortes de façons pour m'empêcher. C'est normal. C'est normal qu'il fasse des contre-arguments, mais de dire ensuite que ça, c'est de l'évidence de malveillance, ça, je trouve que ça rencontre pas le test et c'est, et c'est, c'est - et c'est ça que je vais - c'est ça que je vais argumenter. À chaque fois qu'on va vouloir amener une telle évidence, je vais argumenter ça, Monsieur le juge, où je, je vous demande de l'arrêter tout de suite avant qu'on aille dans cette direction-là. L'autre exemple, il a - monsieur Dearden a pris un exemple de, d'un *factum* où j'ai utilisé la phrase « *false sworn statements*. » Et c'est vrai, j'ai utilisé cette phrase-là et c'était dans le contexte d'un argument. Pour moi, y'avait de la preuve documentaire d'une contradiction très frappante et je voulais donner cette information-là à celui qui décide pour me donner droit de ré-examiner la

5 témoin par rapport à cette contradiction-là parce
que j'avais, d'un côté, ce qui avait été dit et
j'avais, d'un autre côté, un, un courriel,
d'ailleurs qu'on va voir pendant le procès, qui
semblait très directement contrarier ça, à mon
sens. Donc, je fais mon argument le mieux
possible pour avoir le droit, pendant les
découvertes et avant le procès. Donc, est-ce que
10 c'est malveillant de faire les meilleurs
arguments qu'on peut faire et de les faire avec
force?

15 INTERPRETER: He's the one who brought it - this
up about the topic. The association complained
to the Chief Justice and they said, "We'll look
after that." The Registrar said, "Forget what I
said, bring your documents to me. We'll take
them, accept them.", when the decision was made.
It was with normal cost, that is minimum. There
was no indication from the Supreme Court that
20 there was an abuse or none of that story, no sign
of that. Legal arguments detailed as to why I
could go to the Supreme Court, following the
decision that had been made. Of course, the
plaintiff doesn't agree. She wants to find all
25 sorts of ways to prevent me. It's normal that
they bring about counter arguments but to say
afterwards that this is proof of malice, I find
that that does not meet the test requirements.
This is what I'm going to argue. Every time that
30 type of evidence will be brought forward, I'm
going to argue in that way or I'm asking you to
put a stop to that right now before we head in

5 that direction. The other example Mr. Dearden
alluded to the factum, where I used the sentence
"false sworn statements," and it's true. I did
use that sentence and it was in the context of an
argument. As I saw it, there was documentary
evidence of a flagrant contradiction and I wanted
to give that information to the examiner to allow
me to re-examine the witness because on the one
hand, I went - had what had been said and on the
10 other hand, there was an email, which we'll see
during the trial that contradicted that. So, I
made my argument as best I could, to avail myself
of my rights during discovery and before trial.
Is it malicious to make the best arguments one
can with force?

15 LE TRIBUNAL : Bien, si on dit que la personne
ment, peut-être.

INTERPRETER: But if one were to claim that the
opposition is lying, it could be.

20 DENIS RANCOURT : Et, et, et c'est peut-être par
manque d'expérience et c'est - et donc, j'aurais
- je - c'était au début, peut-être, oui, mais
j'aurez à répondre à ça. Peut-être que ça, c'est
un exemple où vous allez dire : « Oui, ça, je
25 l'accepte. » Puis quand il va donner son
évidence, il va répondre, mais de dire d'emblée,
de façon évidente, que c'est de la malveillance,
je pense que c'est faux, mais, mais vous voyez,
c'est ça le problème avec, avec une cause en
30 diffamation. C'est que j'ai les mains menottées.
La moindre chose que je dis pour faire ma
défense, on dit tout de suite, : « Ah, ah,

regardez. Vous respectez pas ses émotions. C'est blessant que vous ayez faite tel, tel argument. C'est blessant que vous ayez fait une motion. C'est blessant que vous ayez une place, une phrase dans un *factum* sur 30 motions dit ça parce que, pour vous, c'était très clair. »

Y'avait un document qui contredisait et elle avait dit mainte fois la chose qui est contredit par un document et un autre témoin qui jure que c'est pas vrai. Bon. Pour moi là, y'a une grosse contradiction. Donc, je l'ai fait avec force dans - au début, sans expérience, c'est arrivé. Je vais, je vais avoir à expliquer, mais mes mots, je comprends ça, mais de là, ça - cas par cas, je comprends. Cas par cas, je comprends mais de là, à dire je vais avoir à expliquer mes mots, pas dans le sens que je suis d'accord que y'avait malveillance, mais dans le sens que je vais expliquer que je, j'ai, j'agissais de bonne foi et je faisais - je croyais que mon devoir de me, de me, de me défendre moi-même, c'est de, de faire les meilleurs arguments possible. Alors, c'est, c'est - là, j'ai, j'ai pu répondre aux choses de monsieur Dearden. Peut-être que j'aurais pas dû répondre parce que je trouve que monsieur Dearden a essentiellement fait des arguments sur le fond des questions qui, qui sont - qui devraient être devant le jury, pas, pas - c'est comme si il voulait vous décider d'avance dans son argument pour que, quand il est question, est-ce que c'est pertinent, que ça un - ça un impact et, et c'est ça - c'est pour ça que

je n'apprécie pas qu'on fasse des arguments de fond quand que la question technique est une autre question et c'est pour ça que j'étais inconfortable, mais là, j'ai répondu et puis voilà.

INTERPRETER: And maybe it's because of a lack of experience and, and, and at, at the beginning, maybe but, but I would have to answer about that. Maybe that's an example where you will say, "Yes, I accept that." And when he will give his evidence, he will reply but to say boldly that it is malicious, I think it's false but, but you see, that's the problem with a defamation suit. It's - I have been handcuffed. The last thing I say or everything I say in my defence, I'm told, "Ah, ah, look. You're not respecting the other person's emotion. This is troubling. This is troubling that you brought a motion. It's troubling that you've said this." You put one sentence in a factum on 30 motions because one sentence says, because for you, in your mind, there was a document that clearly contradicted, contradicted by another document and another witness that swears it's not right. So, for me, there's a big contradiction. So, I made that argument forcefully at first, without experience, it happened. I will have to answer for that. My choice - word choices, I understand that, but from that, on a case-by-case basis, I understand but as far as saying that I will have to explain my words, not that there was no maliciousness or malice but I'll have to explain that I was acting

5 out of good faith and I was only simply defending myself with the best arguments possible. So, so, so, there I've answered Mr. Dearden. Maybe I shouldn't have answered Mr. Dearden. Mr. Dearden has essentially made arguments on the substance of - and these issues should be before the jury. It not - it's not - it's like he's trying to get you to decide ahead of time, by his submissions, as to whether or not it's pertinent so to impact. And that's why I don't appreciate that, that argumentation on the substance where it's a, a technical issue. I wasn't comfortable, but there you have it, I've replied.

LE TRIBUNAL : Merci.

15 THE COURT: All right. What time is it? Okay. We did take a break, but.... Okay. So, I'll reserve on this and give you a decision, at the latest early tomorrow - before we start tomorrow, obviously. Okay. Let's look at the other points, which are not as, I suppose...

20 MR. DEARDEN: Your Honour...

THE COURT: ...difficult.

25 MR. DEARDEN: ...while we're still on the topic, I'm - and I'm not replying or rearguing here, one of the documents - if you look at Tab 1 of our factum, Your Honour, one of the documents that is in the collective Book of Exhibits of Professor St. Lewis, is this simple list of motions and appeals. That's in there and I intend it to be as part of the evidence, subject to what you may rule tomorrow but right now that list.... Your Honour...

THE COURT: Hold on, Mr...

LE TRIBUNAL : Attendez donc une minute.

INTERPRETER: Just hold on.

DENIS RANCOURT : C'est plus qu'une réponse ça,
je veux dire.

INTERPRETER: That's more than an answer.

LE TRIBUNAL : Okay, mais...

DENIS RANCOURT : Il est...

INTERPRETER: He's, he's...

LE TRIBUNAL : Écoutez, je vous ai permis de ré-
répondre à quelques reprises là. Ça fait que, on
va y donner, à maître Dearden, le même....
Allez-y.

INTERPRETER: Listen, I allowed you to re-reply
and intervene a few times. So, we're going to
give Mr. Dearden the same, the same time. Go
ahead.

THE COURT: Yes, go ahead.
That's more an answer.

THE COURT: He's - listen. I allowed you to re-
reply and intervene a few times so we're going to
give Mr. Dearden the same time. Go ahead.

MR. DEARDEN: I'm just fast forwarding to
tomorrow. Right now, we've got the volume one of
Professor St. Lewis' Book of Exhibits will have
this or has this list in it and that may have to
change, subject to what you rule tomorrow but...

THE COURT: Yeah.

MR. DEARDEN: And the other point...

THE COURT: Yeah, but you can always just take it
out as you mentioned.

MR. DEARDEN: And just rip it out...

THE COURT: Yeah.

MR. DEARDEN: ...if need be.

THE COURT: Yeah.

MR. DEARDEN: Your Honour, the other matter I wanted you to think about is unfortunately, for this side of the table, many of Mr. Rancourt's articles, the U of O Watch articles, 'cause he's written something like 68 of them on Professor St. Lewis, they do refer to Allan Rock agreeing to fund this litigation without a cap. So, it's there and the jury's gonna have that and there's nothing I can do about that but I would seek and request an instruction from Your Honour that the issue of who pays - that you instruct the jury that the - that who pays the plaintiff's fees is irrelevant. They have to be charged or instruct - directed that, that's irrelevance.

THE COURT: Okay. You're saying that however it comes out, directly and purposely or not, the fact, if there's evidence that the jury hears that the legal fees are being paid by the University of Ottawa, you want me to direct the jury to say that that is irrelevant of their decision.

MR. DEARDEN: Yes. And I'm not intending on referring to U of O agreeing to pay the legal fees at all but there will be documents that I may be....

THE COURT: Yeah, yeah, I can - and...

MR. DEARDEN: Okay.

THE COURT: ...there may be other issues like this, which I've started noting that maybe will

come out and maybe we have to tell the jury, listen, that you - that is irrelevant to your task but we'll find that.

5 MR. DEARDEN: As an example, the million dollars of damages sought, he - Mr. Rancourt has many places in his documents and his interviews with the media that a million dollars is being claimed here. I don't intend to refer to that and Your Honour asked us to do some homework, by the way, as mentioning the amount of damages to a libel jury changed and it hasn't. It hasn't. So...

10 THE COURT: So, that's one of the things I had noted. If it comes out somehow, directly or indirectly, obviously, they don't take this into consideration and I'll direct them to that effect.

15 MR. DEARDEN: Well on that one, Your Honour, and again just for you to contemplate overnight, first of all, myself or Mr. Rancourt shouldn't be talking about the amount of the damages...

20 THE COURT: Yes.

25 MR. DEARDEN: ...to the witness or to the jury or at all but would a direction be like throwing gas on a fire to put it out if you said to them, by the way, you're not supposed to know how much Professor St. Lewis is claiming a million bucks, and then you just tell them. You know, so...

30 THE COURT: Yes. Maybe Mr. Rancourt will have something to say about that. You may be making submissions on his behalf, which is very fair of you. It's true that if I say to the jury don't consider the fact that Mr. Rancourt put a million

dollars in - then maybe - it may be...

DENIS RANCOURT : Non, mais...

THE COURT: ...it gives them a more idea that maybe they should.

DENIS RANCOURT : Mais il est pas difficile de donner cette directive-là sans parler de un million de dollars.

INTERPRETER: But it's not difficult to give that instruction without speaking of the million dollars.

LE TRIBUNAL : Non, non, mais moi, si y'en a pas, je veux dire normalement, si vous aviez pas dit ça, les chances sont que y'aurait jamais un montant d'argent qui serait - donc, on aurait pas besoin même de leur en parler de montant. Là ici, il semblerait que nécessairement, ça va sortir qu'il va avoir un - donc, normalement, lorsqu'il y a quelque chose que le jury entend, mais qu'il ne doit pas prendre en considération, en général, on dit au jury : « Bien, écoutez, c'est là là, mais ça - quand vous allez arriver à un montant, vous devez pas vous fier sur quoi que ce soit que vous avez lu ou entendu à propos de.... » Bon. Mais là, ce que maître Dearden dit puis y'a peut-être raison, de leur rappeler que ça été dit pendant que je leur donne mes choses ou je leur fais une directive spéciale un moment donné pendant que - peut-être que ça va plus les...

THE COURT: No, no. But if there isn't - normally, if you hadn't said that, the chances were that a mention would have never been - so we

wouldn't have to talk about it - about money, right? But here necessarily, it's gonna come out, it would appear. So, normally, when there's something that the jury hears but that they shouldn't take into consideration, generally, the jury is instructed, "Listen, when you will come to an amount, you mustn't rely on anything that you may or have seen or heard." But what Mr. Dearden is saying and he may very well be right, that it was said that I give them a specific instruction that maybe, that will only prompt him...

DENIS RANCOURT : Je suis d'accord que...

LE TRIBUNAL : ...les stimuler que...

DENIS RANCOURT : ...mais on pas besoin...

LE TRIBUNAL : ...autre chose.

DENIS RANCOURT : Bien sûr. On a pas besoin de dire le chiffre, un million pour dire ne considéré pas tout ce que vous avez entendu sur la quantité des dommages.

INTERPRETER: But, of course, we don't need to say the number a million dollars, to say don't consider everything that you have heard about the amount of damages.

LE TRIBUNAL : Ah, oui, mais là encore, okay.

Mais je vous adressais ça parce que des fois, la - on veut donner une directive en faveur d'un parti puis qu'on pense qui est en faveur d'un parti puis le parti dit : « Bien, non, j'aimerais mieux vous le - que vous en parliez pas du tout. » Ça fait que c'est ça qui est soulevé là.

INTERPRETER: But there again, yeah. I'm asking

you about that because sometimes, we want to give an instruction in favour of one party and we compare what's in favour of a party and the other party would say, "Well, I'd rather you not talk about it at all." That's what was raised.

DENIS RANCOURT : Oui, mais moi, moi je pense que le point de départ, ça devrait être que le jury peut faire la part des choses et que si il reçoit une directive, il le comprend. Je pense que notre point de départ, ça doit être que...

INTERPRETER: But I think that the starting point should be that the jurors can, you know, work this out themselves if they understand the instruction. Our starting point is that...

LE TRIBUNAL : Oui.

DENIS RANCOURT : ...le jury comprend ce qu'on dit.

LE TRIBUNAL : Oui.

DENIS RANCOURT : Et, et ça devrait être ce qui nous guide, je pense, quand on...

INTERPRETER: ...the jury will understand what they are told and that should guide us.

LE TRIBUNAL : Oui, oui, mais...

DENIS RANCOURT : Mais...

LE TRIBUNAL : ...vous allez - c'est que vous...

DENIS RANCOURT : Mais...

LE TRIBUNAL : ...avez pas l'expérience de - c'est le point de départ...

DENIS RANCOURT : D'accord.

LE TRIBUNAL : ...mais vous avez pas l'expérience de...

DENIS RANCOURT : Non.

LE TRIBUNAL : ...des nuances, de tout ça.

INTERPRETER: Well, but you don't have the experience. That is the starting point but you don't have the experience of the nuances of that.

DENIS RANCOURT : Non, je n'ai pas l'expérience, mais je peux quand même faire des soumissions et je veux...

LE TRIBUNAL : Mais - bon, de toute façon...

DENIS RANCOURT : ...mais je veux...

INTERPRETER: No, I do not have the experience but I can still make submissions...

LE TRIBUNAL : ...sur ça, y'a...

DENIS RANCOURT : ...je...

LE TRIBUNAL : ...pas - c'est clair que on ne parle pas de montant.

INTERPRETER: Well, in any event, on, on that, there - on that, it's clear that we don't talk about amounts.

DENIS RANCOURT : Oui.

LE TRIBUNAL : Okay? Bon, ça fait que ça règle ce problème - votre objection.

INTERPRETER: So, all right. So, that deals - takes care of that one.

DENIS RANCOURT : Mais.... Merci. Merci. Y'a quelque chose que monsieur Dearden a soulevé là, juste maintenant là, et je veux faire écho là-dessus. Je suis complètement d'accord avec monsieur Dearden que c'est absolument inévitable que le fait que l'université paye va sortir parce que c'est partout dans l'évidence, partout dans l'évidence et quand ça sort dans l'évidence, par exemple, monsieur Dearden va dire : « Voici 68

articles de blogue. » Je sais pas ce qu'il va dire et quand il va dire ça, ça revient à ce qu'on disait tantôt. Moi, je vais dire : « C'est parce que y'en a 68 que c'est important. »

Qu'est-ce qu'ils disent chacun? Et est-ce que chacun était une communication appropriée ou pas? Et est-ce que y'a une défense pour chacune de ces choses-là? C'est comme ça que je vais répondre. Donc, je vais nécessairement parler du fait que l'université paye pour justifier le fait que j'ai dit ça et, et pourquoi je pensais que c'était important et que ce n'est pas de la malveillance de ma part d'avoir communiquer comme ça parce que ma position est que l'expression est essentielle...

LE TRIBUNAL : Il faut...

DENIS RANCOURT : ...que je l'ai fait responsablement et sans malveillance et donc, je vais l'argumenter ça.

INTERPRETER: Thank you. But there's something that Mr. Dearden raised just now and I want to touch on that as well. I'm in complete agreement with Mr. Dearden that is inevitable that the university is paying, is gonna come out because it's everywhere in the evidence and when it comes out in the evidence, for example, Mr. Dearden will say, "Here are 68 articles from a blog." I don't know what he's going to say but when he says that, it comes to - that is what I was saying earlier, it's not the fact that there are 68 of them, it's the fact that what each of them says or claims and what each relies on and is

5 there a defence for each? So, I will necessarily speak about the fact that the university is paying to justify the fact that I said one thing and it's not malice to having communicated in this way. Because my position is, is that the expression is essential. I made it responsibly and without malice. And therefore, I'm going to argue that.

10 LE TRIBUNAL : Mais ça, c'est pour le - c'est au jury à décider.

INTERPRETER: That is for the jury to decide.

15 DENIS RANCOURT : Oui, mais ce que je veux dire, c'est que, Monsieur le juge, il faut s'attendre à ce que je parle du mont - du fait que l'université paye dans mon argument que ce n'est pas malveillant d'avoir écrit ces blogues-là. C'est...

20 INTERPRETER: But what I - yes, but what I'm saying Your Honour, is that we need to expect that I will raise the issue in my argumentation that the university's paying, that it is not malice that I drafted those blogs.

25 LE TRIBUNAL : Bon, bien, vous avez le droit à une réponse.

DENIS RANCOURT : Bien sûr.

30 LE TRIBUNAL : C'est certain que vous pouvez vous attendre que moi je vais leur dire que le fait que l'université paye, est absolument - c'est - y'a rien de mal là-dedans...

DENIS RANCOURT : Oui.

LE TRIBUNAL : ...etcétéra, etcétéra.

INTERPRETER: Well, you're entitled to answer but

you can't expect me to tell them that the fact that the university's paying - there's no - there's no wrong in that and that's not a consideration.

DENIS RANCOURT : Oui, je comprends ça.

INTERPRETER: I understand that.

LE TRIBUNAL : C'est ça qui est la loi.

DENIS RANCOURT : Je comprends ça.

LE TRIBUNAL : Bien là, allons....

THE COURT: Yes, okay.

MR. DEARDEN: Your Honour, on that point, Your Honour, so I heard it right? Mr. Rancourt is intending on giving evidence that he is going to speak to the fact that the University of Ottawa is paying for the legal fees?

THE COURT: No, he says it's going to come out. You're - it's going to come out in his blog.

It's there in the blog and he's going to say that he's going to argue or - well, I suppose, argue but given evidence first that - listen, when he said that, he had no malicious intent.

MR. DEARDEN: No, he can't refer to the fact. I mean, that's what we just - you just ruled that there's nothing improper and it's inadmissible evidence to be talking about that and I don't see how it can come up. All I'm saying is, if - it's in there. It's in what he wrote. I'm not intending on taking the jury to anything where - but if they read the articles, they're gonna see it.

THE COURT: Oh, okay. Well, that's - that was his premise, though, that he thought you were

going to say that. You understand?

DENIS RANCOURT : Si...

MR. DEARDEN: I'm not gonna go there at all.

THE COURT: So, but I'm not - you're bringing me into a situation where you want advance ruling before I know what's in and what...

DENIS RANCOURT : Exact.

THE COURT: ...has to be decided. So, I'm not going to do that. What - whatever evidence can come in will - on the defendant's part, will be certainly affected by how the evidence came in. If it was you that said - that referred to it, then maybe - or that you ask him a question in cross-examination about it, it may put on a different light. I don't know.

MR. DEARDEN: I agree.

THE COURT: But I'll have to deal with that when the matter comes up. I can't deal it in advance. I mean I...

MR. DEARDEN: I'm just letting this defendant know though...

THE COURT: Right.

MR. DEARDEN: ...that it could be extremely prejudicial if he raises it solo and an instruction will have to be given to the jury...

THE COURT: Oh, yeah...

MR. DEARDEN: ...in my respectful opinion.

THE COURT: ...oh yeah. Well, I think he - at the last point, he understands that.

DENIS RANCOURT : Absolument.

THE COURT: That was said to him.

DENIS RANCOURT : Absolument.

INTERPRETER: Absolutely.

THE COURT: Okay, so shall we - I think for some reason, I need a little break again because - and then maybe you can sort out exactly what we need to complete here. I know what - I put a check here on what we do and we'll - if we could try to wrap this up this morning, it would be great.

MR. DEARDEN: Yes.

THE COURT: If not - but let's take 10 minutes so that we can start afresh.

R E C E S S

U P O N R E S U M I N G :

THE COURT: All right. So, let's go through some of the issues. I think a lot of them are not controversial. One was, naturally, the use of a screen in order to put up on the big screen the excerpts from the blog and to show exactly the words, which are being complained about. So, I get...

LE TRIBUNAL : J'imagine...

DENIS RANCOURT : Je...

LE TRIBUNAL : ...y'a pas de problème avec ça?

INTERPRETER: I imagine I [*sic*] don't have a problem with that?

DENIS RANCOURT : Non, j'ai, j'ai, j'ai des soumissions à faire par rapport à ça, Monsieur le juge.

INTERPRETER: Well, I do have submissions about that, Your Honour.

LE TRIBUNAL : Ah, okay.

SUBMISSIONS BY MR. RANCOURT:

5 DENIS RANCOURT : Dans une cause en diffamation,
le - ce qui est soumis en plaidoiries écrites est
contraignants, c'est-à-dire si le plaignant dit
les mots en cause sont les suivants, il choisit
des mots et dit : « Ces mots-là veulent dire
telle affaire. », ils sont absolument contraints
à cet énoncé-là.

10 INTERPRETER: In a libel case, what is submitted
as written submissions in the pleadings, that the
words complained of and those words are chosen
and those words mean something, they are
absolutely restricted to that passage complained
of.

15 LE TRIBUNAL : Mm-hmm. Oui, c'est ça, okay.

DENIS RANCOURT : Et je remarque...

LE TRIBUNAL : Donc, vous dites...

20 DENIS RANCOURT : Donc, je remarque que ici, la
façon que s'est découpée, ce ne sont pas les
morceaux qui sont choisis dans l'énoncé...

INTERPRETER: I'm noting what you're saying. So,
I'm noting here the way that it's been cut up.
Those are not the parts that were chosen in
the...

25 LE TRIBUNAL : Vous voulez dire dans la
déclaration?

INTERPRETER: You mean in the claim?

DENIS RANCOURT : Dans la déclaration.

30 INTERPRETER: In the Statement of Claim.

MR. DEARDEN: Yes, they are. Yes, they are.

DENIS RANCOURT : Non, je crois pas.

INTERPRETER: No, I don't think so.

THE COURT: Okay, let's look at this. Do I have the - oh, boy I didn't bring the Trial Record.

So, do we have the Statement of Claim somewhere?

MR. DEARDEN: Do you have an amended Trial Record, Your Honour?

THE COURT: Yeah, but that's the problem. I didn't realize that what....

MR. DEARDEN: But I could lend you mine and then...

THE COURT: Okay.

MR. DEARDEN: ...I can go off on....

DENIS RANCOURT : Je me trompe peut-être.

J'allais de mémoire. J'avais l'impression vive, mais je me trompe peut-être. Je veux pas...

INTERPRETER: I may be in error but I was going by memory. I thought clearly. I may be mistaken but...

LE TRIBUNAL : Bien, peut-être au lieu, faite juste vérifier ça vite, monsieur...

DENIS RANCOURT : Je suis en train.

LE TRIBUNAL : ...Rancourt, là puis...

DENIS RANCOURT : Oui.

LE TRIBUNAL : ...peut-être que c'est - ça va régler le problème.

INTERPRETER: Well, maybe, can you just check that quickly, Mr. Rancourt and maybe that'll resolve the issue.

THE COURT: So, it may be that - Mr. Rancourt says maybe he was mistaken about this. He'll check.

MR. DEARDEN: It's paragraph 38 of the Statement

of Defence, Your Honour.

THE COURT: Of the Statement of Claim?

MR. DEARDEN: Claim, sorry. Sorry, paragraph 38 says in claim. To my knowledge, this is exactly the words complained of.

THE COURT: Okay.

MR. DEARDEN: Thirty-eight deals with February 11th and then the May - there's no doubt that the May 18th article is properly highlighted and numbered and that, you will find at paragraph 42, Your Honour.

THE COURT: The same - so, it's the same, which are underlined then?

MR. DEARDEN: Yeah.

DENIS RANCOURT : Okay, je me trompe peut-être. Je, je m'en excuse. Si je me suis trompé, je m'en excuse.

INTERPRETER: I may have been in error. I'm sorry. If I did make a mistake, I'm, I'm, I apologize.

LE TRIBUNAL : D'accord.

MR. DEARDEN: And, Your Honour...

DENIS RANCOURT : Le, le, le, le - la seule inquiétude, c'est parce que c'est la première fois que je vois ce nouveau document, qui normalement, était pas parmi les documents qu'on allait montrer au jury. C'est pour ça là que je passe à travers toutes [sic] les, les problèmes qui pourraient avoir lieu, mais le, la raison que je suis inquiet, c'est parce que c'est très important en diffamation d'avoir exactement le bon contexte. Par exemple, quand on regarde cet

5 - ce, ce bloque, normalement, on voit ce qui a dans le carré noir ici. On voit, on voit l'image du vidéo et on, on sait donc exactement. Donc, c'est - je, je partage juste mes inquiétudes là, mais j'ai, j'ai pas d'objection à ce point-ci.

10 INTERPRETER: The, the, the only concern I have is that this is the first time that I see this new document. Normally, this wasn't during the documents that was going to be shown to the jury. So, so, this is the problems that could arise but the reason I'm concerned is that it's very important in libel, to have exactly the right context. So, for example, when we look at this blog, normally, we would see what would be in the black square here, you would see the image, the video and you would know then. So, I'm just sharing my concerns. I don't have an objection at this point.

15 LE TRIBUNAL : Merci. Non, y'a - c'est...

20 DENIS RANCOURT : Merci. Donc, si je comprends bien...

INTERPRETER: So, if I understand correctly...

25 LE TRIBUNAL : ...parfaitement - y'a des aides visuels comme ça, etcétera, peuvent - et démonstratifs pour aider le jury à mieux suivre, on veut rendre la tâche au jury, qu'il puisse - ils sont habitués à par de ça avoir des projections puis des choses comme ça.

30 INTERPRETER: So, visual aids as these and demonstrative aids can help the jury to better follow along. Our aim is to simplify the job of the jurors and, and so, projections are - can

help.

DENIS RANCOURT : Donc, si je comprends bien, juste pour m'assurer, ce document serait mis à l'écran, mais on ferait pas un lien Internet pour aller chercher quelque chose? On montrerait ce document, précisément?

INTERPRETER: So, I want to ensure that would be up in the screen - on the screen, but we won't go to the Internet to go and get something? We would show that document, specifically?

MS. SEMENOVA: No, no.

LE TRIBUNAL : Ce...

THE COURT: Yes.

MR. DEARDEN: I meant...

THE COURT: This document would be what it is right now there.

MS. SEMENOVA: Yeah.

MR. DEARDEN: Right now.

THE COURT: That would be...

MS. SEMENOVA: Yeah.

MR. DEARDEN: And the jury will be given a - each be given a copy of the articles in issue.

THE COURT: Yeah.

MR. DEARDEN: They'll each have one of these. We've reproduced them.

DENIS RANCOURT : C'est très bien.

INTERPRETER: That's very well.

MR. DEARDEN: Your Honour, also...

DENIS RANCOURT : Pas d'objection.

INTERPRETER: No objection.

MR. DEARDEN: ...I intend to put up on an easel, Your Honour, a - on boards because when I'm

5
examining some witnesses, I have a blow up on the board that would go around Madam Clerk there and maybe block her view but I intend to use these. Sorry, folks. I would intend - so, it's exactly the same thing. It's been blown up larger but put on a board and we've put it on an easel and...

THE COURT: Yeah. It's the same thing, all right.

10
MR. DEARDEN: Yeah.

THE COURT: That's fine.

DENIS RANCOURT : Est-ce que, juste pour être clair, est-ce que c'est des documents qui seraient montrés pendant l'énoncé d'ouverture?

15
INTERPRETER: Just to be clear, are those documents would be shown during the opening statements?

LE TRIBUNAL : Et dans l'énoncé d'ouverture et j'imagine pendant qu'il questionne, oui.

20
THE COURT: In the opening and I'm imagining when he'll be examining witnesses.

MR. DEARDEN: And during examination of witnesses.

THE COURT: Yeah.

25
DENIS RANCOURT : Donc, en particulier, pendant les énoncés d'ouverture et on peut...

INTERPRETER: And specifically, during the opening statements...

30
LE TRIBUNAL : Il peut référer aux choses, oui. Oui.

INTERPRETER: He can refer to those aids.

DENIS RANCOURT : Donc, il - vous avez

l'intention...

INTERPRETER: So, you intend...

MR. DEARDEN: Well, I might. I don't actually - I haven't made that decision yet, 'cause they're gonna have it in their hands.

THE COURT: Yeah, yeah, this is - presentation, as long as it's admissible and properly done, it's up to the parties to decide how they want to present it. That's advocacy.

DENIS RANCOURT : Donc, on peut montrer des documents pendant l'énoncé d'ouverture. J'étais pas au courant. On peut montrer des documents qui éventuellement seraient dans des exhibits, qui sont pas encore des exhibits parce que c'est pas encore...

INTERPRETER: So, we can show documents during our opening. I wasn't aware of that. We can show documents that eventually would be exhibits that are not yet exhibits.

THE COURT: Well, you have to make sure - they have - exhibits are something else because exhibits may or may not be deemed to be....

LE TRIBUNAL : Vous pouvez pas montrer des pièces si ils ne sont pas des pièces admissibles.

INTERPRETER: You can't show exhibits if they haven't - if they're not admissible.

DENIS RANCOURT : Parce que ça c'est - et ce n'est pas admis jusqu'à temps que on a établi en cour que c'est bel et bien ce, ce truc-là et que c'est bel et bien moi qui l'a publié, etcétéra.

INTERPRETER: Well, this is not admitted until we've established that it is indeed the - this

thing that I'm the one that published it.

LE TRIBUNAL : Bien, c'est pour ça qu'il nous en parle là.

INTERPRETER: Well, that's why he's talking to us.

DENIS RANCOURT : Okay.

LE TRIBUNAL : Qu'il va les montrer. Je veux dire si...

DENIS RANCOURT : Bien...

LE TRIBUNAL : ...vous dites : « Je veux pas que vous les montriez avant que le - avant que le témoin va témoigner. » Puis, il va dire : « Bon, avez-vous vu? » « Oui, j'ai vu telle chose. C'était dans.... » Bon, bien, un moment donné, ça va être introduit. Il faut pas, non plus, être plus catholique que le Pape là, mais ce que je veux dire, c'est que vous pouvez pas référer à une pièce qui va peut-être être jugée inadmissible plus tard. Ça fait que si y'a quelque chose que vous voulez - à laquelle vous pouvez référer dans votre - puis ça, ça m'amène à une autre question. On a eu une discussion concernant que vous présenteriez un discours d'ouverture au jury avant la preuve de la demande.

INTERPRETER: That he's going to show us this. That's why he's giving us a heads- up. If you say, I don't want this shown before this, this witness is presented, well, okay. At this - some point, it'll be admitted but you can't be holier than thou, you know? We - you cannot refer to an exhibit or a document, which will not be admitted

subsequently. So, you can refer - well, there, so, that raises another issue. We had a discussion concerning your presentation of, of an opening statement to the jury before the plaintiff's evidence.

DENIS RANCOURT : Oui.

LE TRIBUNAL : La demande.

DENIS RANCOURT : Je - j'avais compris que j'avais cette option-là. J'avais...

INTERPRETER: Yes, I had understood that I had that option.

LE TRIBUNAL : Bien...

DENIS RANCOURT : ...j'avais compris que ça avait été...

INTERPRETER: I had understood that.

LE TRIBUNAL : Et puis là, naturellement, on est en train de tout discuter ça, j'ai - la règle - moi, ce que je vais vous demander c'est que vous me disiez pourquoi que c'est important parce que la règle c'est, si vous regardez la règle 50 - je l'ai pas devant moi là, mais y'a la règle qui parle des procédures devant un jury dit ceci, c'est que le demandeur peut présenter un exposé initial avant de présenter sa preuve, pour expliquer ce qu'il a l'intention à faire et ça dit que le défendeur présente avant sa preuve, mais que avec la permission du tribunal, le défendeur peut faire un exposé initial après l'exposé initial du demandeur. Puis là là, après avoir été là-dessus pendant bien des jours, je me demande si c'est - si ça va pas - si c'est - si on devrait - si je devrais vous donner la

5 permission de faire ça ou pas puis j'aimerais ça
savoir pourquoi que vous pensez que c'est
important pour vous à comparer à présenter votre
- faire votre argument lorsque vous saurez
exactement ce qui a - qui est devant le - en
autre mot, il faut vous me convainquez que y'a
une certaine - ça va résumer votre capacité de
présenter votre cause là parce que...

10 INTERPRETER: Well, now, we're discussing all
this, you know, the rule is, what I'm going to
ask you is, you need tell me why it's important
because the rule is, if you look at rule 50 -
well, I don't have it; the rule that speaks to
15 procedures before the jury. The rule says that
the plaintiff can make an opening statement
before presenting its case and its evidence,
which they intend on doing and the defendant will
present before his evidence but with the Court's
20 permission, the defendant may make an opening
statement immediately after the opening statement
of the plaintiff. So, having been on this case
for a number of days, I don't know if it's not -
if I should give you the permission to do that or
not. I'd like to hear from you why you think
25 it's important that you make an opening after the
plaintiff's - the - once you will know - before
you know what evidence has been brought. Well,
you need to convince me, in other words, that
this will hinder your capacity to carry your
30 case.

DENIS RANCOURT : Vous me, vous me demandez ça
maintenant tout de suite là?

INTERPRETER: Well, now, you're asking me this now?

LE TRIBUNAL : Oui. Bien, je veux dire vous vouliez - vous m'avez dit l'autre jour...

DENIS RANCOURT : Oui, j'ai...

INTERPRETER: Yes. Well, you told me the other day that you wanted to...

LE TRIBUNAL : ...je voudrais en présenter une.

DENIS RANCOURT : ...j'ai affirmé que je voulais...

LE TRIBUNAL : Oui.

DENIS RANCOURT : ...absolument le faire de cette façon-là.

INTERPRETER: Well, I stated that I absolutely wanted to do it that way.

LE TRIBUNAL : Puis c'est quoi dans votre...

INTERPRETER: And so, what are you thinking?

DENIS RANCOURT : Ma, ma, ma compréhension, c'était que la barrière pour obtenir la permission de faire ça, était basse, que essentiellement...

INTERPRETER: Well, my understanding was is that the barrier to obtaining permission is that the barrier was low.

LE TRIBUNAL : Possiblement...

DENIS RANCOURT : ...essentiellement...

LE TRIBUNAL : Mais chaque cause est sur ses faits. Ça fait que expliquez moi ça un peu. Je vous dis pas non là. Je veux juste savoir là.

INTERPRETER: Well, it's not that low.

Essentially, well, each case is on its merits.

So, I'm not telling you no. Just, you know, talk

to me.

SUBMISSIONS BY MR. RANCOURT:

5 DENIS RANCOURT : Bien, moi, je veux avoir la
chance de - d'expliquer - de donner au jury une
image qu'on - qu'on - plus complète que jusque -
l'image que j'ai moi de comment va se passer mon
10 évidence. Au début, pour que ils puissent avoir
les deux perspectives, au début, avant de
commencer à regarder la preuve de un et de
l'autre. Je veux qu'ils puissent avoir une image
mentale au début de qu'est-ce qui va se passer au
long du procès parce que de cette façon-là, ils
ne seront pas - ils, ils vont avoir une, une, une
15 perspective plus rationnelle, plus équilibrée de
la chose; le fait de voir les deux points de vue
différents; d'un point de vue, le point de vue de
la plaignante; de l'autre point de vue, celui qui
se défend et pourquoi - comment il va se
20 défendre; les preuves qu'il va amener et tout ça;
d'avoir la chance de voir les deux présentations
au début, ça, ça les mets dans un, une
perspective plus objective et plus équilibrée;
25 qu'il y a, effectivement, deux côtés ici avant de
se ancrer uniquement dans la preuve d'un côté...

INTERPRETER: Well, I want the opportunity to
explain, to give the jury an image - a more
complete one that - the one that I have as to how
30 my evidence will work out at first so that they
can have both perspectives up front before
looking at one party's evidence or the other's.

I want them to have that imagery in mind as to what is going to carry on in this trial so that they are not - so that they will have a more rational perspective, a more balanced approach to see both point of views, different point of views. On the one hand, the plaintiff's and on the other hand, the defendant's and how he's going to defend himself and the evidence he's going to proffer; to have the opportunity to see or hear both presentations, open - openings, it will put the jury in a more objective and a more balanced position than there is before, you know, hunkering down into the evidence of one party.

LE TRIBUNAL : Okay, okay, je vais...

DENIS RANCOURT : ...et surtout...

LE TRIBUNAL : ...vous permettre de le faire. Je vais vous permettre de le faire. Donc...

DENIS RANCOURT : Merci.

LE TRIBUNAL : ...la seule chose c'est que si vous voulez référer à des documents, il va falloir que on - parce que après la présentation de monsieur Dearden, il va avoir une petite pause, mais vous pouvez - que vous me disiez qu'est-ce que - à quoi vous voulez référer les...

INTERPRETER: You know what? I'm going to allow you to do it but the only thing I'm going to tell you is that if you want to refer to documents, because after Mr. Dearden's present - opening, there will be a, a break. You will need to tell me what you want to refer to.

DENIS RANCOURT : Oui, je, je suis encore en train de...

LE TRIBUNAL : Oui, bien...

DENIS RANCOURT : ...préparer ces choses-là.

MR. RANCOURT: Yes, I'm still preparing that.

LE TRIBUNAL : ...une fois que vous allez avoir
décider ça là...

DENIS RANCOURT : Mais...

LE TRIBUNAL : ...dites-moi le qu'est-ce que
c'est. Si y'a - si y'en a.

INTERPRETER: So, once you will have made your
mind to that, if there are any documents...

DENIS RANCOURT : Oui, y'a, y'a une chose que je
sais déjà que j'aimerais me référer, Monsieur le
juge. J'aimerais - ah, mais en faite, c'est -
non, c'est même pas un document que je veux
montrer. J'ai - je pense pas - si je trouve des
documents, je vous les montrerai d'avance.

INTERPRETER: Yes, there's one thing already that
I know I want to refer to. I want to - well, in
fact, no, it's not even a document that I want to
show. In fact, if, if I find documents, I will
show them to you before.

LE TRIBUNAL : Okay.

DENIS RANCOURT : Merci.

LE TRIBUNAL : Bon.

SUBMISSIONS BY MR. DEARDEN:

MR. DEARDEN: Your Honour, could I just put on
record and also so Mr. Rancourt understands,
you've given him leave to make his opening right
after my opening, which is fine but Mr. Rancourt
should appreciate that he's gotta be extremely

careful on what he refers to, to the jury in the opening address that isn't prejudicial and for instance, he has a witness, Jean-Marie Vianney, who is a friend of his. That's all I know of what this witness is gonna do. That witness isn't a fact witness on the reports that are in issue on writing his blog. I think he thinks that he can put character evidence on for him, like he's the victim but the victim, in my respectful submission, is Professor St. Lewis. So - and he's gonna have him testify for an hour-and-a-half or two hours. He's gotta be really careful.

DENIS RANCOURT : Non, non, non, non, non. C'est pas une heure et demie ou deux heures.

INTERPRETER: No, no, no, no, no. It's not an hour-and-a-half or two hours.

MR. DEARDEN: Well, whatever. Can you...

DENIS RANCOURT : Je pense que vous vous trompez complètement là.

INTERPRETER: You're completely in error.

MR. DEARDEN: I'm wondering, Your Honour, if I could continue?

DENIS RANCOURT : C'est un, un court temps.

LE TRIBUNAL : Juste une minute, il va - vous pouvez...

INTERPRETER: Just a minute. He...

DENIS RANCOURT : Non, mais c'est - c'était...

INTERPRETER: No, but...

MR. DEARDEN: Anyway, I'm just giving the defendant fair notice that if he says something prejudicial at any time during the trial, the

process is that I will ask that the jury be excused. I'll object to it and the remedy is, at the early stages at any rate, that the trial judge gives a correcting instruction to the jury about what the defendant or the plaintiff has done. If it builds up enough that you've said prejudicial things to the jury, Mr. Rancourt, then it's in my hands to move that the jury be discharged and this be a judge-alone trial. So, I'm giving you fair warning, 'cause I'm very nervous from seeing your will-say about what you think you can put in evidence and you should be very careful, in my respectful submission, about what you tell them in the opening tomorrow. You'd have a better idea of what's admissible if you did it after the plaintiff's case was in because then, there will be rulings when the defendant cross-examined of whether it's admissible or not, what area you want to go into and that'd give you better idea of what your evidence can be in defence but you've chosen to go after me but I - and I think I've given you fair warning.

DENIS RANCOURT : Je remercie monsieur Dearden de ses - d'avoir exprimer ses inquiétudes.

MR. RANCOURT: I thank Mr. Dearden to having expressed...

LE TRIBUNAL : Parce que ce qu'il dit est exact là.

INTERPRETER: What he said is correct, Mr. Rancourt.

DENIS RANCOURT : Oui.

5 LE TRIBUNAL : Si - il faut - il va falloir que vous soyez prudent de rien dire qui pourrait être inadmissible ou qui pourrait être préjudiciable parce que ultimement, c'est la - c'est l'ultime recours, c'est que je vais - c'est que je libère le jury puis que je - on continue juge seul.

10 INTERPRETER: You will need to be careful to not say anything that might be deemed inadmissible or prejudicial because ultimately, ultimately, it's the ultimate remedy is that I dismiss the jury and that we continue judge alone.

15 DENIS RANCOURT : Oui, je, je fais très attention dans - du mieux de ma connaissance et je pense que je comprends un peu le processus, mais juste pour assurer monsieur Dearden, j'avais pas l'intention de mentionner monsieur Vianney pendant mon, mon énoncé d'ouverture puis j'ai certainement pas l'intention de - d'aller dans les choses, qui maintenant ont été exclues par vous, Monsieur le juge, dans votre décision de ce matin et puis mon seul but, c'est de expliquer comme - les, les preuves que je vais donner et la logique dans laquelle je vais donner ces preuves-
20 là et les, les, les circonstances telles que je les vois. C'est-à-dire le, la chronologie, comment, comment - à quoi ils peuvent s'attendre pour qu'ils puissent avoir une perspective équilibrée et objective.

25
30 INTERPRETER: Yes, I will be very careful to the best of my ability. I think I understand the process but just to reassure Mr. Dearden,

I didn't have any intention of mentioning Mr. Vianney during my opening statement and I certainly have no intention to delve into things that have been excluded, given your rulings this morning and my only purpose is to express that the evidence I will proffer and a logical order that I will follow - the circumstances as I see them. That is, the chronology, how, how - what they may - can expect to have a balanced and objective perspective.

LE TRIBUNAL : Mm-hmm. Mais vous comprenez les - des fois, les dangers de le faire tout de suite, mais de toute façon, vous êtes un homme averti. So, c'est tout ce qu'on peut faire. Bon. Puis on comprend que vous n'êtes pas un avocat et puis, etcétera, etcétera, mais ça change pas le risque de préjudisme naturellement, puis si ça - si y'a un préjudisme réel qui est créé, puis ça vous aidera pas non plus si je vous interrompe puis je vous - je dis : « Vous pouvez pas dire ça. » Ça vous aidera pas non plus, face au jury, comprenez-vous? Ça fait que c'est ça qui est le - il faut toujours être prudent parce que le jury...

INTERPRETER: But you understand the dangers of doing it right away? Well, you know what? You're, you're - you've been warned. That's all we can do. And we understand that you're not a lawyer, et cetera, but that does not diminish the risk of prejudice and the danger and if there is a prejudice that arises and it won't help you if

I interrupt you and stop you from saying something, that will not help you before the jurors. Do you understand? You always need to be careful because the jury....

5 DENIS RANCOURT : Mais, Monsieur le juge, par rapport à ce que vous venez de dire, je peux - j'aimerais vous, vous exprimer la chose suivante : j'ai - si vous pensez que je suis en train de faire une erreur fatale, j'apprécierais que vous me le disiez et j'accepterais ça et j'accepte les répercussions négatives que ça pourrait avoir sur le jury. J'accepte ça. Si vous, si vous êtes convaincu que je suis en train de faire une erreur qui pourrait être fatale, 10 j'apprécierais un petit mot d'explication. Je, je...

INTERPRETER: Your Honour, because of what you've just said, I'd like to express the following to you: if you think that I'm going to make a fatal error, I would appreciate you telling me and I will accept that and I will accept the negative repercussions that it could have on the jury. If you are convinced that I am making a fatal error, I would appreciate a brief explanation. 20

25 LE TRIBUNAL : Mais je peux pas l'expliquer...

DENIS RANCOURT : ...j'aime mieux...

LE TRIBUNAL : ...trop trop devant le jury. Mais...

30 DENIS RANCOURT : Non, mais...

LE TRIBUNAL : ...je peux juste vous dire, vous pouvez pas - comprenez-vous? C'est ça qui est le

problème puis y'a deux choses; un, y'a ceux qui sont évidents à moi comme juge du procès, mais y'a bien des choses que vous, les parties, savez que je ne sais pas. Donc, ça ce peut que je n'interrompe pas puis que maître Dearden pourrait soulever une objection, qu'on peut faire en l'absence du jury parce que - donc, vous pouvez pas vous fier à 100 pour cent que...

DENIS RANCOURT : Mais...

LE TRIBUNAL : ...moi je vais vous arrêter. Comprenez-vous ce que je veux dire là?

INTERPRETER: Well, I, I can't explain it too much in front of the jury. Do you understand? That's the problem is that number one, there are things that are evident as a trial judge to me, but there are many things that you, the parties, know that I do not. So, it is possible that I do not intervene and that Mr. Dearden would raise the objection and then we would deal with that in the absence of the jury. So, do not rely a hundred percent on the idea that I'm gonna put a brake on you. Do you understand?

DENIS RANCOURT : Dans, dans les quelques causes que j'ai lues où y'avait un jury et où y'avait un défendeur qui était auto-représenté, y'avait une grande latitude par rapport aux énoncés et le juge réparait ça dans ses explications dans la charge au jury. C'est les causes que j'ai lues, mais c'est, c'est juste - dont j'ai pu voir le genre de choses qui étaient pas recommandées et j'ai, j'ai une certaine compréhension de ça et je

vais faire de mon mieux possible, mais je voudrais pas - je sens qu'on me met un peu, un peu là de la pression que, qui est peut-être pas nécessaire.

5 INTERPRETER: Well, in the case laws that I've read, where there was a self-rep and juries, there was a broad latitude with regards to what was being said and the judge corrected those in the charge. That's the case law I went over but
10 I saw the kinds of things that were not recommended and I have a certain understanding of that. I will do my best but I wouldn't want - I, I, I feel like I'm being - pressure's being applied on me that, that might not be necessary.

15 LE TRIBUNAL : Bien, c'est pas une question de vous mettre de la pression. C'est juste que - c'est juste pour - c'est la nature de la bête. Bon.

20 INTERPRETER: Well, listen, it's not an issue of putting pressure on you. It's, it's, it's the nature of the beast. It is what it is.

THE COURT: Okay. So, that's...

25 DENIS RANCOURT : Et, et, et juste un dernier point, c'est moi, Monsieur le juge, qui a demandé le jury et j'y tiens très fortement au jury...

LE TRIBUNAL : Oui.

30 DENIS RANCOURT : ...que j'ai un droit à un jury de mes pairs et je - ça, c'est - ma première priorité, c'est de m'assurer que j'ai un jury. Dans une cause de diffamation, c'est presque - c'est, c'est encore plus fort la notion du jury.

LE TRIBUNAL : Oui.

DENIS RANCOURT : Y'a, y'a des - y'a des
autorités très - des - la - sur ce point-là...

LE TRIBUNAL : Oui, je suis au courant...

DENIS RANCOURT : ...que dans une cause de
diffamation, le jury est...

LE TRIBUNAL : ...mais maître Rancourt...

DENIS RANCOURT : ...est presque garanti.

INTERPRETER: And the last point, Your Honour, I
am, Your Honour, the one who requested to - for a
jury. I hold that. I will defend that. I have
a right to a jury of my peers and what I want to
ensure is that I have jurors in a libel case.

It's more so important this jury notion and peer
notion. There are authorities that are clear on
that in defamation and libel.

LE TRIBUNAL : ...la dernière chose que je veux,
c'est d'avoir à décider cette cause ici. J'aime
bien mieux que le jury décide...

DENIS RANCOURT : Oui.

LE TRIBUNAL : ...mais le fait d'avoir - le
problème avec ça, c'est que le juge du procès a
toujours une discrétion si il y a des conduites
et des choses qui se passent qui font que le jury
est préjudicié puis si ça s'arrivait puis c'est
pas une question de - comme je vous dis, c'est
l'ultime - c'est le - l'ultime remède. C'est pas
quelque chose qui est - mais je peux vous
assurer...

INTERPRETER: *Monsieur Rancourt, Monsieur*
Rancourt, the last thing, the last thing I want

5 to do is have to decide this case. Let me tell
you that. I'd rather have the jury decide this
case. The discretion of the trial judge remains,
however, that any conduct that may occur that -
if that were to occur, it's not evident but as
I've said, ultimately, ultimately, that's the
remedy. It's not something but I can assure you,
sir.

10 DENIS RANCOURT : Même l'acte, même l'acte de
libel et, et de l'Ontario parle du jury dans une
cause de diffamation.

INTERPRETER: But even the *Libelous Act*, the
libelous locked raises the issue of a jury's
presence in a libel defamation suit.

15 LE TRIBUNAL : D'accord. Donc...

THE COURT: Next matter then.

MR. DEARDEN: Exclusion of witnesses order, Your
Honour?

THE COURT: Yes, all right.

20 MR. DEARDEN: So, Your Honour, it's Rule 52.06
and the trial judge may, at the request of any
party, order that a witness be excluded from the
courtroom until called to give evidence and I'm
requesting that witnesses be excluded in this
trial.

25 DENIS RANCOURT : Une clarification avant de
décider, Monsieur le juge.

INTERPRETER: One clarification, sir, before you
decide, Your Honour.

30 LE TRIBUNAL : Non, non, mais y'a pas fini, je
pense.

INTERPRETER: No, no, but he's not done yet.

DENIS RANCOURT : Ah, excusez-moi.

INTERPRETER: Oh, sorry.

MR. DEARDEN: One witness, in particular, Your Honour, Ms. Gervais, where it's going to be a credibility issue, where she says that Professor St. Lewis didn't meet her on a particular date that she recalls. That's where St. Lewis has a different recollection. There's absolutely no doubt that that witness has to be excluded and nobody can communicate any of the evidence, of course, to any witness that's excluded but being as I don't know much about any of Mr. Rancourt's witnesses, other than the ones from U of O he summoned, I would request that it be a blanket exclusion of witnesses.

THE COURT: All right.

LE TRIBUNAL : Oui, maître - monsieur Rancourt?

DENIS RANCOURT : Moi, la chose que j'aimerais clarifier, j'ai pas d'objection dans le gros, mais j'ai un point important que je veux soulever par rapport à cette question, c'est le suivant : je pense que monsieur Dearden a déjà dit que son expert sur la question Internet et de technologie, est en réponse à mon expert et donc, moi, je pense que c'est normal que les témoins experts puissent s'entendre l'un et l'autre et même, c'est commun que la Cour demande aux experts de parler entre eux pour régler leurs différences, etcétera. Je pense que y'a même une règle à cet effet-là, mais - donc pour...

5 INTERPRETER: Well, for me, the thing I'd like to clarify, I have no objection in a general rule but I do have an important point that I want to bring about regarding this question. Here it is. I think Mr. Dearden already said that his expert witness on the question of Internet and technology is in reply to my expert. So, so, I think that the expert witnesses, be important that they be able to hear one another's testimony and it's normal that the Court ask the expert witnesses, speak with one another to rule on - to deal with...

10 LE TRIBUNAL : Laissez-moi vous arrêter.

DENIS RANCOURT : Oui.

15 THE COURT: Expert....

MR. DEARDEN: Well, I'm fine with that, Your Honour, because my witness is going on after his. So, we'll say no one can listen to Mr. Rancourt's Dr. Cooperstock, I'm fine with that.

20 LE TRIBUNAL : Oui, normalement, les experts sont exclus, oui. Ils sont exclus de l'exclusion.

INTERPRETER: Normally, expert witnesses are excluded - are excluded from the exclusion.

25 DENIS RANCOURT : Excusez. Donc, donc, est-ce que c'est le cas pour notre cause? On va exclure les experts de l'exclusion?

INTERPRETER: So, so, is it the case for our case? Will we exclude the expert witnesses?

30 LE TRIBUNAL : Oui, oui, les experts, c'est bien à moins que ça soit un expert qu'on appelle, mais si c'est un expert qui veut donner de l'opinion,

5 mais qui veut aussi parler de certains faits
qu'il a connaissance dans le sens de - à propos
de la cause et qui prend la crédibilité d'un
témoin ou de l'autre, il va falloir l'exclure
pour ce parti-là, mais normal - si c'est de vrais
experts qui viennent donner leurs opinions sur un
point technique, pas de problème que ils soient
présents. En faite, souvent, ils sont présents
10 pour tout le procès. Comme je vous dis, c'est
pas - bien, pour des témoins qui sont - sur
lequel ils fondent leurs faits là...

DENIS RANCOURT : Oui.

LE TRIBUNAL : ...mais ils ne peuvent pas
témoigner sur des faits, comprenez-vous?

15 DENIS RANCOURT : Oui.

LE TRIBUNAL : Contreversials parce que là, ils
sont - c'est pas comme témoin expert qu'il
témoigne, mais comme témoin des faits là.

DENIS RANCOURT : Mm-hmm.

20 LE TRIBUNAL : Comprenez-vous? Merci.

DENIS RANCOURT : Mais...

LE TRIBUNAL : Donc, on va s'entendre là-dessus.
Les experts...

25 INTERPRETER: No, for expert witnesses, that's
fine unless it's an expert that we call - let's
say it's an expert who wants to give an opinion
but also wants to talk about certain facts about
which he's knowledgeable about, regarding the
case, that it might touch the credibility of one
30 or another, then he or she would have to be
excluded for that part but if it's on a technical

5 problem or issue or a topic, no problem that they
be present. A lot of times, they're present for
the whole duration of the trial. So, they can
testify on facts, you know, if they're going -
controversial facts, because then it's not as an
expert witness but just as a, a witness on facts.
So, let's understand one another on that. Thank
you.

10 THE COURT: The experts then are excluded from
the exclusion order. All right.

DENIS RANCOURT : Merci.

THE COURT: So, there will be a global order
excluding all witnesses.

15 LE TRIBUNAL : C'est très important que les
procureurs, comme maître Dearden et monsieur
Rancourt, que vous avisiez vos témoins avant que
le procès commence, à la première - en tout cas,
à la première opportunité, qu'ils sont exclus,
qu'ils ne doivent pas discuter de leurs preuves
20 avec les autres témoins et particulièrement,
qu'ils ne le discutent pas avec des témoins - de
la preuve des témoins qui ont déjà témoigné
lorsque ces témoins-là ont complété leurs
témoignages. Donc, la responsabilité incombe à -
25 aux parties de le faire. Je pourrais ordonner -
naturellement, la bonne vieille façon de le
faire, c'est qu'on invoque tous les témoins puis
les témoins sont présents en cour puis on lit la
- l'ordonnance d'exclusion, mais c'est pas
30 pratique de faire ça là. Ça fait que à cause de
ça, il va falloir que vous assuriez, tous les

deux, de communiquer les obligations et qu'est-ce que ça l'a - qu'est-ce que ça veut dire parce que si ça sort plus tard que ça pas été fait ou que quelqu'un a discuté là, ça serait à votre - il va falloir prendre des mesures à ce moment-là.

INTERPRETER: It's very important that, that the - that the lawyers, *maître* Dearden and Mr. Rancourt, that you also advise your witnesses before the start of the trial. In any case, at the first opportunity you have, that they are excluded, that they must not discuss their evidence with any other witness and in particular, that they not discuss with witnesses, of the evidence of witnesses who have already been through their evidence. So, the responsibility, the responsibility rests with the parties to do so. I could order, naturally, the nice old-fashioned way of doing this is, we call all the witnesses; they're all present in the body of the courtroom and we read the order for exclusions. It's not a practical way of doing it. So, because of that, we will need to have you both be aware that you're responsible for communicating the essence of such an order because if it comes out later that it wasn't done by either one of you and that evidence is discussed, well then...

DENIS RANCOURT : Monsieur le juge, je m'engage à faire ça.

INTERPRETER: Well, Your Honour, I do commit to doing that.

LE TRIBUNAL : Merci.

INTERPRETER: Thank you.

THE COURT: All right.

MR. DEARDEN: Bilingual transcript order, Your Honour. I can hand Your Honour the order that Justice...

THE COURT: I have the order that you submitted. I haven't signed it yet. I'm still thinking about it. As a general - so what - is there - you want - you want to add something more than what was said the other day?

MR. DEARDEN: No, no other than to just alert the Court, though, that in terms of one of the matters that Mr. Rancourt had raised the last time we did - we were dealing with this issue. When I do the read-ins, the way I'm gonna reproduce them is with the French answer in the page with the English translation underneath. So, the jury, when they're looking at it, they will have the French version. I'm not just reproducing the English. I'm producing both the French and English. And, of course, the order says that if there's a conflict with - well, the language that's spoken is the - it prevails. So, they'll be reading - if it's Mr. Rancourt - well, it will be Mr. Rancourt. They'll be reading the French version. I'll be reading it in English.

THE COURT: That's for the read-ins.

MR. DEARDEN: The read-ins, yeah.

THE COURT: Because it's different, for the cross-examination, I think will - Mr. Rancourt

can talk to me about the reading - the read-ins in a minute but for cross-examination, I think if you are - if any witness, that has testified, has made a previous statement and a party wishes to cross-examine him on it, I will have the interpreter do it consecutively in court. In other words, if you want the cross-examine, for example, Mr. Rancourt, on something he said in discovery or in cross-examination or whatever, you will have to - you will obviously put the words in English that you have because that's what the interpreter will - you will have to make sure that the - we'll have to have a copy for the interpreter who will then read the - what was said by the witness then textually. I don't want an interpretation of the interpretation.

DENIS RANCOURT : Je, je pense bien comprendre, mais je voudrais juste signaler par rapport à ce dernier point, que il y a deux avocats à plein temps depuis le début de cette cause et que maître Semenova est parfaitement bilingue. Parfaitement bilingue. Donc, y'a aussi l'option - moi, moi ce que je voulais, c'est si on me dit ce que j'ai dit, je veux qu'on me le dise exactement comme je l'ai dit. Je veux pas commencer à dire : « Est-ce que cette version anglophone est ce que j'ai dit avant? » Je vais...

INTERPRETER: I do believe I understand but I just want to highlight something about this last point. There's two full-time lawyers here that

5 have been working on this case. *Maître* Semenova is perfectly bilingual. There's also the option - what I wanted was - if I'm told what I said, I, I want it to be said to me exactly like I said it. I don't want to say that - did I say that if the English version isn't what I said before.

10 LE TRIBUNAL : Non, mais je vous - j'ai expliqué là qu'est-ce qui va se passer. Monsieur - supposons qu'on prend un exemple, c'est que monsieur Dearden va dire, bon bien, vous avez dit à la page 26 question 23, telle, telle, telle chose. Il va le lire en anglais, mais l'interprète va immédiatement vous le donner en français.

15 INTERPRETER: I just explained what's gonna happen. Let's say, an example here. Mr. Dearden will say, let's say, well, you said at page 26, question 23 such and such a thing. He's gonna read it in English, but the interpreter will immediately give it to you in French.

20 DENIS RANCOURT : Exactement ce que j'ai dit.

INTERPRETER: Exactly what I said.

25 LE TRIBUNAL : Parce que vous, tout ce qu'on - ce qui a - ce qui vient d'être dit là, va tout être dit en - donc, vous allez le recevoir comme il a été dit. Y'avait jamais question - ça serait jamais - et le jury saura ce que vous avez dit. C'est ce que l'interprète dit là, pas ce que monsieur Rearden [*sic*] dit.

30 INTERPRETER: Because for you, what was just said there, will all be said in French. You're going

to get it back exactly as it was said. We'll never be - the jury will know that what you said is what the interpreter is saying, not what Mr. Dearden read.

5 DENIS RANCOURT : Le - j'ai - je vois des difficultés avec ça parce que j'ai remarqué des différences des - importantes parce que vous savez, ces interprétations sont fait sur le vif...

10 LE TRIBUNAL : Oui.

DENIS RANCOURT : ...en, en, en - hors cour sur le vif...

LE TRIBUNAL : Oui.

15 DENIS RANCOURT : ...rapidement et y'a, y'a souvent des choses où je me dis - parce que je suis parfaitement bilingue, des fois, j'entends ce qui ce dit puis dit oh, c'est pas vraiment ça. Quelques fois je l'ai mentionné ou quelques fois, j'ai aidé, mais d'autres fois, je fais juste
20 laisser passer, mais...

INTERPRETER: I understand - I see difficulties arising out of that. Why? Because I noted significant differences because you know these interpretations are done just on - immediately,
25 quickly, on the spot. Often, there are things - because I'm perfectly bilingual and sometimes I'll hear it and I'll say, "No, that's not right." Sometimes, I've mentioned it. Sometimes, I've let it go.

30 LE TRIBUNAL : Oui, oui, y'a toujours des nuances, des choses qui sont des fois plus que

des nuances.

INTERPRETER: There's always some nuances.

DENIS RANCOURT : Quelques fois, y'a eu des vrais problèmes, pas avec - pas autant avec l'interprétation que la traduction. Des fois, la traduction disait le contraire. Alors - de ce qui avait été dit et donc, moi, j'ai beaucoup d'inquiétude et je voudrais pas que monsieur Dearden pense, quand je vais répondre à la question, que je suis d'accord avec ce qu'il vient de dire en anglais. C'est ça le problème parce que lui va dire quelque chose en anglais en pensant - et moi, je vais être obligé de dire, okay, est-ce que - est-ce que qu'est-ce lui est en train de dire, il pense qu'il a dit est la bonne chose alors que je sais, qu'en français, j'ai dit ça puis là, je vais passer toute mon temps à dire : « C'est pas vraiment ça. J'ai dit ceci en français. », pour répondre à sa question. Voyez-vous ce que je veux dire?

INTERPRETER: Sometimes, there were real problems. Not necessarily the interpretation but the translation, sometimes was the opposite of what was said. I'm very concerned. I don't want Mr. Dearden to think that when I'm going to answer, when he asks me the question, that I agree with him. He's gonna say it in English and I'm gonna have to say now what he's saying now. What he thinks he said is the right thing whereas in French, I know I said that. So, all along, I'm gonna spend my time saying, "It's not really

that. I said this in French.", to answer his question. You see what I, I'm saying?

LE TRIBUNAL : Non, bien là, c'est trop compliqué là votre affaire. Je comprends ce que vous dites, mais je pense que vous rendez la chose trop - vous anticipez des problèmes qui ne sont probablement pas là.

DENIS RANCOURT : Bien, c'est...

LE TRIBUNAL : Ça fait que on va en rester là. Si y'a un problème, on pourra le soulever.

INTERPRETER: It's too complicated your matter. I understand what you're saying. I think you're - you're anticipating problems that, that are probably not there. So, if there is a problem, we will be able to highlight...

DENIS RANCOURT : C'est parce que c'est des problèmes que j'ai vécu pendant les contre-examinations.

INTERPRETER: Because these are problems I went through during cross-examinations.

LE TRIBUNAL : Non, non, non, je comprends, mais je pense que la façon que je viens de vous dire qu'on va procéder...

DENIS RANCOURT : Okay.

LE TRIBUNAL : ...on va - le jury va savoir - si maître Dearden dit n'avez-vous pas dit dans l'interrogatoire, telle ou telle chose et puis que lui le dit en anglais, l'interprète va dire est-ce que vous n'avez pas dit, je cite ba, ba, ba, ba, ba. Bon.

DENIS RANCOURT : D'accord. Et...

LE TRIBUNAL : Vous allez dire : « Oui, j'ai dit ça. » Ou, j'ai dit ça ou j'ai pas dit ça ou...

INTERPRETER: If the jury wants to say - to - if he wants to know, did you not say such and such is thing and he says in English and the interpreter will say, "Did you not say blah, blah, blah?" And you will say, "Yes, I said that." Or, "No, I didn't say that."

DENIS RANCOURT : Je comprends votre décision et c'est votre décision, Monsieur le juge, mais y'a quelque chose là. Moi, je le sais pas c'est quoi les *read-ins*. J'aimerais qu'on m'explique qu'est-ce que c'est ça.

INTERPRETER: I understand your decision and it is your decision, Your Honour, but there is something, I don't know what a read-in is. What is that?

LE TRIBUNAL : Okay, c'est qu'un parti peut - en plus de ce - y'a toujours deux choses - y'a - on peut se servir d'une déclaration antérieure pour contre-interroger un témoin, pour démontrer que la personne a dit quelque chose différent. Ça, c'est ça qu'on vient de parler là, si on veut.

INTERPRETER: It's that a party on top of - there are always two things. You can use a former statement to cross-examine, to demonstrate that somebody said something differently. Yes, that's what we just talked about.

DENIS RANCOURT : Okay.

LE TRIBUNAL : Mais on peut aussi aller - les interrogatoires au préalable, les *discoveries*, on

peut lire, dans sa cause, on peut lire des extraits. Comprenez-vous? Comme partie de sa cause.

INTERPRETER: You know these discoveries, examinations for discovery, one can read in one's case - we can take some excerpts as part of their - of your case.

DENIS RANCOURT : Sans témoin là? Juste le...

INTERPRETER: Without a witness?

LE TRIBUNAL : On prend - on peut dire, okay, bon bien là, je veux lire les questions 7 à 10 qui ont - que monsieur - les réponses que monsieur Rancourt a données aux questions dans son interrogatoire au préalable et ils sont lues.

INTERPRETER: Yes, you can say okay let me see what I want to read here. Question 7 to 10, that - answers that *monsieur* Rancourt gave to the question 7 to 10 at his examination for discovery and they're read-in.

DENIS RANCOURT : Okay. Et...

LE TRIBUNAL : C'est ça des *read-ins*. Ça fait partie de la preuve de la partie qui les...

INTERPRETER: Those are read-ins. That's part of the evidence of, of the party that's reading them. Okay.

DENIS RANCOURT : Alors, deux questions sur les *read-ins*. Une chose, une, une copie papier de ce qu'on *read in* est donnée au jury, c'est ça?

INTERPRETER: Two questions on readings. One, a hard copy of what we're - is being read and is given to the jury, right?

LE TRIBUNAL : Oui. Avec - qui aura les deux choses là.

INTERPRETER: Yes. They will have the two things there.

DENIS RANCOURT : Okay. Et puis, donc, ce *read-in*, est-ce que il peut être fait n'importe quand, comme dans le milieu d'interroger un témoin, par exemple?

INTERPRETER: So, this read-in, can it be done any time like in the middle of examining a, a witness?

LE TRIBUNAL : Non, non, mais son - c'est comme un témoin.

INTERPRETER: No, it's like the witness.

DENIS RANCOURT : Donc, on les fait...

LE TRIBUNAL : Normalement, ça se fait à la fin.

INTERPRETER: Normally, we do that at the end.

DENIS RANCOURT : On les fait...

LE TRIBUNAL : Normalement...

DENIS RANCOURT : ...tous ensemble?

INTERPRETER: We do them all together?

LE TRIBUNAL : Normalement. Mais ça, on va laisser ça à monsieur - ça, c'est la façon...

INTERPRETER: Normally. Your Honour, so, we're gonna leave that to...

DENIS RANCOURT : Moi, c'est juste pour savoir...

LE TRIBUNAL : Okay.

DENIS RANCOURT : ...pour savoir à quoi je, je m'attende.

INTERPRETER: I just want to know what to expect.

LE TRIBUNAL : Mais vous allez voir comment

monsieur Dearden va faire ça. Vous - si vous voulez en lire des choses que madame St. Lewis a dit, vous pourrez les dire...

5 INTERPRETER: But you will see how Mr. Dearden's going to do it. If you want to read things that Mrs. St. Lewis said, you will be able to bring that in.

10 DENIS RANCOURT : Est-ce que je suis obligé de le faire à la fin? Est-ce que je peux le faire dans le milieu?

INTERPRETER: Do I have? Am I limited to doing at the end?

LE TRIBUNAL : Non, pendant votre cause.

DENIS RANCOURT : Au début?

15 LE TRIBUNAL : Pendant votre cause.

INTERPRETER: No, during your case, conducting your case.

DENIS RANCOURT : Pendant la cause?

LE TRIBUNAL : Pendant la cause.

20 DENIS RANCOURT : Quand je veux? Okay, merci.

INTERPRETER: Okay. During....

25 MR. DEARDEN: Well, Your Honour, if I can just clarify for Mr. Rancourt. First of all, the read-ins, you only can read-in from the examination for discovery of Professor St. Lewis and that's your evidence. Whatever you read in, is your evidence and you do it at the end of the case. So, in my case, when all our witnesses are done on the plaintiff's side, then I read in
30 parts of your examination for discovery at the end of my witnesses.

LE TRIBUNAL : Oui, c'est ça.

MR. DEARDEN: Then at the end, at the end of your witnesses, you do the same thing, if you wish but I'm letting you know that that's your evidence. You read in an answer from Professor St. Lewis, you turn out not to like it, you're stuck with it. So, read-ins, you have to be careful what you read in.

LE TRIBUNAL : Oui, c'est - je pense qu'il vous donne une bonne avertissement parce que les gens, des fois, comprennent pas que si ce que madame - si ce que vous lisez qui a été dit par madame St. Lewis est favorable ou plus favorable à sa position qu'à la vôtre, vous êtes pris avec.

INTERPRETER: Yes. I think he's providing you with a good caution. People sometimes don't understand that if what - if what you read in, as being said by Miss St. Lewis, turns out being favourable or more favourable to her position than yours, you're stuck with it.

DENIS RANCOURT : Mm-hmm.

LE TRIBUNAL : C'est que vous lisez des choses - supposons vous voulez prouver qu'elle savait que la lumière était rouge - je sais pas pourquoi je vais loin de même en vous expliquant, mais en tout cas, que la lumière était rouge, vous pouvez lire qu'à un moment donné, dans les - elle a répondu à une question dans laquelle elle disait : « Est-ce que vous saviez que la lumière était rouge? » « Oui, la lumière était rouge. » Donc, vous avez pas besoin de - d'autre preuve.

Bon. C'est pour ça des *read-in*. Okay?

INTERPRETER: So, for example, if you want to prove that she knew that the light was red - I don't know why always use examples with the red light but - you can say that she can read an answer, "Did you know that the light was red?" "Yes, the light was red." So, you don't need any other evidence. That's the point of read-ins.

DENIS RANCOURT : Oui.

LE TRIBUNAL : Bon, vous êtes, je pense, assez intelligent pour comprendre ça, mais c'est le danger. Certaines personnes lisent des affaires qui sont très favorables pour l'autre bord puis après ça, ils sont pris avec.

INTERPRETER: So, I think you're smart enough to understand that but that's the danger. Parties sometimes read things or passages that are very favourable to the other side and then they're stuck with them.

DENIS RANCOURT : Je, je le comprends, mais je...

LE TRIBUNAL : Et vous les faites à la fin parce que vous pouvez pas faire ça à pêle-mêle là. Vous faites ça à la fin comme un.... C'est comme - c'est un témoin de plus que vous avez ça.

Okay?

INTERPRETER: So, you, you can't do that just kind of loopy goopy. You have to do it at the end.

DENIS RANCOURT : Mais est-ce que j'ai le droit de le faire en morceaux quand je veux?

INTERPRETER: But do I have the right to do it in piece when I want to?

LE TRIBUNAL : Bien, non, non, parce que le jury comprendra pas rien de qu'est-ce que vous faites. Okay? Faites le toute à la fin. Bon.

INTERPRETER: No, because the jury will not understand. You do it all at the end.

THE COURT: Next time, next subject.

MR. DEARDEN: So, Your Honour, did we - I don't think you decided whether you are gonna issue an order for the trial transcripts, that they be translated bilingually, which I am requesting and...

THE COURT: Why do you want this immediately?

MR. DEARDEN: Well, maybe I should've said...

THE COURT: I'm still thinking about it. I mean, there's two arguments. One, is the cost, ultimately. If you - you need them for the trial?

MR. DEARDEN: No, no. I shouldn't have said immediately, if I did say immediately. No, no, I'm...

THE COURT: No, I...

MR. DEARDEN: ...thinking down the road after this trial is over, what somebody might do with a verdict or a ruling of yours and it is crucial, from my perspective, Your Honour, that I have a bilingual transcript.

THE COURT: Yeah, I...

DENIS RANCOURT : J'aimerais...

THE COURT: ...just - I wanted to think - I thought that I could put that aside for a little while. It's just...

5 DENIS RANCOURT : J'aimerais faire une soumission
parce que y'a pas juste le coût qui est
important. C'est-à-dire, le - laissez-moi dire -
faire un point est le suivant : il est - ce qu'on
a fait souvent dans cette cause, quand je veux un
10 *transcript*, je peux demander juste la langue
originale ou on peut demander avec
l'interprétation. Alors, si - ça, ça résout le
problème parce que si moi je - j'ai la
responsabilité de commander le *transcript* et de
le payer, parce que ça peut coûter, cinq
semaines, ça peut coûter 30 ou 40 000 \$, que j'ai
- c'est, c'est faramineux et si on double ça,
bien, s'est rendu à 100 000 \$. C'est impossible.
15 Si on pouvait dire, c'est moi qui le commande.
C'est une exigence légale si je veux aller en
appel. Donc, je demande que la langue originale.
Si monsieur Dearden veut, pour son travail à lui,
parce que quand qu'il étudie la cause, etcétera,
20 il veut la langue - il veut l'interprétation puis
il veut le voir un à côté de l'autre, qu'il paye
ça et, et qu'il l'est - l'obtienne pour lui pour
son travail, mais, mais l'exigence légale, c'est
la langue originale et il devrait avoir aucune
25 barrière que j'obtienne ça. Donc...

INTERPRETER: I'd like to make a submission
because there's just the cost issue. Let me make
one point as the following: it is what has done -
30 been done often when I want a transcript, I can
ask for only the original language or we can ask
for, with interpretation. So, that solves the

5 problem because if I am responsible for ordering
the transcript and paying for it, because,
because five weeks can take 30 or \$40,000. It's
ridiculous but if we double that, a hundred
thousand, that's impossible. If we could say
that I order it, it's a legal requirement when I
want to appeal. So, I like - I want only the
original language. If Mr. Dearden wishes for his
own work, if he's going over it, he wants to see
10 both languages, side by side, he can pay for it
and he can obtain it for his own needs but the
legal requirement is the original language and
there should be no barrier that I obtain that.

15 LE TRIBUNAL : J'ai - vous m'avez dit ça la
dernière fois puis j'ai pris ça en délibérer. Je
suis en train d'y penser.

INTERPRETER: You've said that to me previously.
I'm deliberating. I'm thinking about it.

20 DENIS RANCOURT : Oui, mais vous voyez, y'a la
possibilité de faire les deux façons. C'est ça
que je voulais vous signaler. On peut le faire
une copie, qui est la copie officielle, qui va à
la Cour d'appel et une copie, c'est la copie de
travail de monsieur Dearden, qu'il fait ce qu'il
25 veut avec.

INTERPRETER: But you see that there's a way of
doing both. That's what I wanted to draw to your
attention. There's an official copy that can go
to the Court of Appeal but the other copy could
30 be Mr. Dearden's working copy and he can do as he
pleases.

LE TRIBUNAL : Oui, mais c'est parce que c'est un petit peu simplifié là. Je comprends votre point, par exemple. Vous avez un certain - votre point n'est pas sans valeur, mais ce que je dis, c'est plus que ça. C'est - si ça va à la Cour d'appel, bien là, vous présentez - tsé, c'est toute la présentation là. Vous devez la - maître Rearden [sic] pour référer à - bon. C'est - ou suivre ce que vous.... Ça fait que c'est - mais...

DENIS RANCOURT : C'est...

LE TRIBUNAL : ...je prends ça en considération.

INTERPRETER: Well, it's a little simplistic. I understand your point. Your, your, your point is not without merit, but if it does go to the Court of Appeal, it's the whole presentation. You point Mr. Dearden to you know, well, to follow what you - I'll reserve on that.

DENIS RANCOURT : J'ai, j'ai, j'ai besoin de le savoir bientôt, Monsieur le juge, parce que c'est une question de justice pour moi. Si je sais que ça va me bloquer en appel, peut-être que ça va me forcer de parler en anglais. Vous savez ce que je veux dire? Si je sais que les *transcripts* vont payer - vont coûter 100 000 \$ et que ça me bloque en appel, je vais être obligé de changer à l'anglais.

INTERPRETER: But I need to know that, Your Honour, because it's a - an issue of justice, 'cause if this precludes me from going to appeal, it might force me to speak in English. If I know

that the transcripts are gonna cost a hundred thousand dollars and force me to not going to appeal...

LE TRIBUNAL : Ah, bien là, écoutez.

DENIS RANCOURT : Non, mais c'est rendu là.

LE TRIBUNAL : Je peux pas être à la merci de toutes vos petites décisions là. Je - moi, je le fais sur la base de qu'est-ce que je pense qui est le droit et la justice là puis c'est tout, mais je peux pas - moi, ça, c'est vos - en autre mot, moi, j'ai mes problèmes puis vous, vous avez les vôtres. Okay. Ça fait que ça, c'est pris en délibérés. Prochaine chose.

INTERPRETER: Well, you know, now, I can't be at the mercy of every decision you take. I'm doing it in the interest of justice and equity. So, I have my concerns and you have yours. So, all right, so that, I will reserve.

THE COURT: Next item.

MR. DEARDEN: Your Honour, I wonder if we can have that Mr. Rancourt and I can exchange by say, three o'clock today, estimated length of cross-examinations of our respected witnesses, 'cause we have not exchanged - we haven't filled in that box how long he thinks he's gonna be or maybe you wanna know that now, how long Mr. Rancourt thinks he'll be cross-examining Professor St. Lewis and other witnesses and how long I'll be cross-examining him.

LE TRIBUNAL : Est-ce que vous avez en préparation, sachant les témoins...

INTERPRETER: Do you know in preparation now?

DENIS RANCOURT : Je suis, je suis en pleine...

LE TRIBUNAL : ...avoir une idée?

INTERPRETER: Do you have an idea?

5 DENIS RANCOURT : ...préparation. Je suis en
pleine préparation. Monsieur Dearden ne m'a pas
donné ses estimés. Il a beaucoup plus
d'expérience que moi, mais moi, j'ai le
10 désavantage en plus d'être en pleine préparation.
Je, je le sais pas et je, je sais - je suis en
train de, d'établir - je, je le sais pas ce que -
comment faire parce que ils mettent des choses en
évidence. Y'en a certaines que je dois
15 questionner. Y'en a d'autres que c'est juste
comme ça et puis c'est tout, je pense. Comment
est-ce qu'on prédit ça et comme - et, et aussi,
en plus, y'a beaucoup des témoins que c'est moi
qui les avait appelés en témoins, mais ils les
20 ont pris de leurs côtés. Alors, moi, j'avais
prévu de leur poser plein de questions, mais
maintenant, c'est leurs témoins et c'est en
contre-examen que je vais leur poser ces
questions-là. Alors, comment est-ce qu'on
25 calcule tout ça? J'ai, j'ai très peu
d'expérience, mais je peux vous dire la chose
suivante, Monsieur le juge, j'ai l'intention
d'être le plus efficace possible et de ne faire
que les choses qui sont nécessaires pour prouver
la cause; que ça. C'est mon but et c'est - et ça
30 sera ça que je vais faire, mais je n'ai pas
l'expérience de savoir exactement le temps que ça

prend et même pas des bons estimés. Je n'ai jamais fait ça et je suis en pleine préparation en ce moment.

5 INTERPRETER: I'm in the midst of my preparation now. Mr. Dearden didn't give me his estimates. He has a lot more experience than I do and I'm at a disadvantage. I'm in the middle of my preparation. I don't know. I'm in the process of establishing - I don't know how to go about because they will bring things in evidence. 10 There's certain things that I must examine, question - others are just like that. How do you predict such situation? On top of that, there's - there are a lot of witnesses that I had called up as witnesses and they have decided to call 15 them. So, I had all these questions to ask in-Chief and now, it's going to be cross. How do you calculate all that? I have very little experience but I can tell you this, I intend to be as efficient as possible and to do only those things that are necessary to prove the case. 20 Only that. That's my objective. And that is what I'm going to be doing. But I don't have the experience of knowing exactly the time required, not even good estimates. I've never done that. 25 And I'm in the midst of my preparation for the time being.

30 THE COURT: We'll leave that, Mr. Dearden, because obviously, I don't think I can impose on him to give us an estimate.

MR. DEARDEN: Okay. Then, the last issue is very

5
10
easy, Your Honour. This is what I mentioned before. I've provided Mr. Rancourt a letter that I sent on February 28th that I asked him to please send me a copy of Dr. Cooperstock's letter where - there's a letter that the expert has referred to or that actually Mr. Rancourt refers it - to a letter from the expert to him, in part of the expert's report - record and I've asked him to produce that letter to me back on February 28th and I would appreciate having that letter soon.

15
DENIS RANCOURT : Est-ce que donc je réponds à ça? C'est un peu une, une - c'est comme une, une lettre de deuxième niveau. Monsieur - l'expert explique ce qui a été demandé puis répond puis je pense qu'il fait référence à une autre lettre de la première fois que je lui ai demandé s'il peut servir d'expert, quelque chose comme ça puis il l'a pas inclus cette lettre-là dans son *affidavit*. Okay? Donc....

20
25
INTERPRETER: So, do I reply to that? It's a bit of a - it's like a - it's a letter of the second level. The expert explains what was asked and answers and I think he refers to another letter for the first time I asked him if he could be an expert witness. He didn't include that in his *affidavit*.

MR. DEARDEN: Mr. Registrar...

DENIS RANCOURT : Qu'est-ce qui ce passe là?

INTERPRETER: What's going on?

30
MR. DEARDEN: ...my letter to you so the judge knows what we're talking about.

INTERPRÈTE : C'est ma lettre....

DENIS RANCOURT : Est-ce que je peux avoir une copie?

INTERPRETER: May I have a copy?

MR. DEARDEN: I gave you one before the break.

DENIS RANCOURT : Ah, j'ai pas remarqué.

INTERPRETER: Oh, I didn't notice.

MR. DEARDEN: It's right in front of you.

February 28, 2014.

DENIS RANCOURT : Okay, donc, donc, si je comprends bien, monsieur Cooperstock a mis la lettre où le remercie d'avoir accepté, dans une lettre où il a accepté puis là, il veut voir la lettre où il a accepté de servir comme expert. Donc, c'est, c'est un détail de ce type-là. Et sur cette question-là, Monsieur le juge, je voudrais exprimer la chose suivante, quand vous allez être prêt. Monsieur Dearden m'a donné aucune des lettres entre lui et ses experts, aucune. II en a eu plusieurs et je les - j'ai besoin de savoir quelles instructions on a données à ses experts. Ça, c'est même pas une lettre d'instruction. Il a déjà en détail exactement les instructions, mais moi, je n'ai aucune information sur les instructions et les réponses et les lettres qu'il a eues en échangeant avec ses experts. Je le sais que y'en a plusieurs parce qu'il a mis dans le cédule B que y'auraient plein de lettres qui avaient été échangées avec l'expert, mais il refuse de me les donner dans son *affidavit* de documents. Alors,

moi, je veux tout ça et dans ma - dans mon idée, je me disais quand que l'expert va être là, je vais lui demander. Je vais lui demander, est-ce que y'a eu des échanges avec la plaignante...

INTERPRETER: Okay. So, so, if I understand correctly, Mr. Cooperstock put the letter where I thank him for having accepted - in the letter where he accepted, now, he wants to see the letter where he accepted to serve as an expert witness. So, it's that type of *détail* - detail. And now on that question, Your Honour, here's what I'd like to express, when you're ready. Mr. Dearden gave me, gave me none of the letters between him and his expert witnesses, none. He had several and I need to know which directives were given to his experts. That's not even a directive letter. He's already got the details of the instructions. I have no information on the instructions, directives, letters he exchanged with the expert. I know he has quite a few because in Schedule B, he said there were quite a few letters exchanged with his expert witnesses, but he refuses to give me that in his affidavit of documents. So, I'm saying to my - to myself, in my mind, when the expert is there, I'm gonna ask the expert, "Were there exchanges?"

THE COURT: Okay, okay. What is this? Usually you have to provide your...

MR. DEARDEN: I did, Your Honour. He has the instruct - my expert witnesses both have the instructions as part of their reports. I don't

5 know what he's talking about. What I was trying
to do here, it's unbelievable - all I was trying
to do is that if he - you know, I wrote him like,
three months ago and said I want this letter that
the expert wrote to you, Mr. Rancourt so, that
we're not having this waste of time when
Dr. Cooperstock shows up and I say to him, I want
the - I want that letter that you sent to - that
you're referring to - that Mr. Rancourt's
10 referring to in this January 10th...

LE TRIBUNAL : Donc...

DENIS RANCOURT : Donc...

LE TRIBUNAL : ...je vous ordonne de produire la
lettre, monsieur Rancourt.

15 INTERPRETER: So, I order you to produce that
letter. Okay.

DENIS RANCOURT : Mais là, y'a, y'a un problème
là. Il faut m'entendre. Okay? Parce que
monsieur Cooperstock a mis exactement les
20 instructions qui lui ont été données dans son
rapport, de la même façon que les témoins de
monsieur Dearden l'a fait. Y'a aucune
différence. Okay?

25 INTERPRETER: But there's a problem here. You
have to hear me. Okay? Because Mr. Cooperstock
put exactly the instructions that were given to
him in his report in the same way that the
witnesses for Mr. Dearden did. There's no
difference. Okay?

30 MR. DEARDEN: I guess he doesn't want me to have
that letter.

5 DENIS RANCOURT : Il, il, il l'a mis exactement.
Moi, ce que je dis, c'est qu'on a le droit,
d'après la jurisprudence, d'avoir les échanges
d'information avec l'expert. Y'en a une douzaine
de telles lettres d'échangée que je ne - ils ne
veulent pas que je l'aie. La jurisprudence dit
j'ai le droit de voir ça et je les ai jamais
vues.

10 INTERPRETER: He put it exactly. So, what I'm
saying is that we have, according to case law, we
have the right to obtain the exchange of
information with the expert. There are about a
dozen of such letters exchanged that they don't -
that they don't want me to have it. Case law
15 says I have a right to see them. So...

LE TRIBUNAL : Okay, vous ferez une requête...

20 THE COURT: So, there's - I don't know how to
deal with this because you're saying you gave -
he says that there are other communication
between an expert, who's going to testify, that
you haven't provided to him.

MR. DEARDEN: Well, he's wrong.

THE COURT: Okay. So...

25 DENIS RANCOURT : Oh, oh...

THE COURT: ...so...

DENIS RANCOURT : ...ça, c'est un gros problème
là.

INTERPRETER: Oh, oh, that's a major issue.

30 LE TRIBUNAL : Non, non, non, non, non, non.

DENIS RANCOURT : C'est dans son *affidavit* de
documents.

INTERPRETER: Look at his affidavit.

THE COURT: You bring a motion during the trial.

DENIS RANCOURT : Incroyable.

INTERPRETER: Unbelievable.

THE COURT: It's a very simple motion. Put the source that you say that...

LE TRIBUNAL : Vous dites que c'est à quelque part.

INTERPRETER: You're saying that it's somewhere.

DENIS RANCOURT : C'est dans son *affidavit* de documents...

INTERPRETER: It's in his affidavit of documents...

LE TRIBUNAL : Bon.

DENIS RANCOURT : ...signé et affirmé et tout.

INTERPRETER: ...signed, affirmed and all.

MR. DEARDEN: Your Honour, the affidavit of documents was done before I retained Bill St. Arnaud as an expert. We just retained him. It is impossible...

DENIS RANCOURT : Je parle de...

MR. DEARDEN: ...what he's talking about.

DENIS RANCOURT : ...Nelson, son expert Nelson. Il, il tourne toujours les choses.

INTERPRETER: I'm talking about Nelson, his expert Nelson. He's always twisting things.

LE TRIBUNAL : Bien, est-ce qu'il témoigne le témoin Nelson?

INTERPRETER: So, you're looking at the Nelson expert?

DENIS RANCOURT : Bien sûr. C'est sur la liste

de témoins et ils ont fait tout un argument. Ils ont plaidé qu'elle va expliquer...

INTERPRETER: Yes, it's on the list of witnesses. They did a whole argument.

MS. SEMENOVA: (Inaudible.)

MR. DEARDEN: I don't have it here.

MS. SEMENOVA: No.

DENIS RANCOURT : ...pourquoi y'a un *legal inuendo*.

THE COURT: Okay, listen, we're wasting...

DENIS RANCOURT : Non, mais vous venez de m'ordonner de faire quelque chose que vous n'ordonnez pas...

INTERPRETER: They're going to explain why there's a legal - but you just ordered to do something that, that he's not...

LE TRIBUNAL : Oui, mais ça, dans ce cas-là, c'est clair. Vous - c'est clair que ça pas été produit.

INTERPRETER: But in that case, it's clear that it was not produced.

DENIS RANCOURT : Mais, mais si je l'aurais ici, je vous le montrerais. C'est très clair. C'est dans l'*affidavit* de documents.

INTERPRETER: But if I had it here, it's quite clear. It's in the affidavit of documents.

LE TRIBUNAL : Non, non, mais je vous le dis de le produire. Ça fait que c'est simple.

INTERPRETER: It's simple.

DENIS RANCOURT : Okay.

INTERPRETER: Okay.

LE TRIBUNAL : En ce qui a trait à...

THE COURT: Mr. Dearden, is there something else that you haven't produced...

INTERPRÈTE : Seigneur.

THE COURT: ...for your other expert?

MR. DEARDEN: Camille Nelson, well, Your Honour, to my recollection, no. I don't have the report here to see the communication. For some reason, this defendant thinks that there's all kinds of letters flowing back and forth. No, there isn't. Okay? No, there isn't.

DENIS RANCOURT : Okay, c'est très simple. Allez voir votre...

INTERPRETER: Okay. It's very simple.

MR. DEARDEN: Can you ask him to sit down, Your Honour?

DENIS RANCOURT : ...*affidavit*...

INTERPRETER: (Inaudible.)

MR. DEARDEN: Can you ask him to sit down, Your Honour?

THE COURT: Hold on, hold on.

LE TRIBUNAL : Attendez un peu.

DENIS RANCOURT : ...de documents.

LE TRIBUNAL : Moi, je...

MR. DEARDEN: But what I'll do, Your Honour, is I'll go back and I'll check my file for Camille Nelson to see if there is a letter missing and I'll produce it. I have no problem with that. What I was trying to do is avoid the waste of time where he won't give me this letter that was sent by Dr. Cooperstock and he seems to be quite

nervous.

DENIS RANCOURT : Monsieur le juge, c'est très simple.

INTERPRETER: Your Honour, it's very simple.

LE TRIBUNAL : Donc, une partie dit blanc puis l'autre dit noir.

INTERPRETER: So, one says white, one says black.

DENIS RANCOURT : Oui.

LE TRIBUNAL : En ce qui a trait si y'en a d'autres.

DENIS RANCOURT : Je vais vous faxer le document. Je vais vous faxer le, le, le - l'*affidavit* assermenté qui dit voici les documents qu'on refuse de votre - de vous donner et c'est toute la correspondance entre l'avocat à Gowlings' et l'experte Nelson qui elle a élaboré, y'a 12...

INTERPRETER: Yes, there is a document. I will fax you the affidavit, sworn affidavit that says here are the documents that we refuse to give you. And it's all the correspondence between the - the Gowlings' lawyer and the expert Nelson who is there elaborating...

LE TRIBUNAL : Bon bien, vous allez montrer ça.

INTERPRETER: You have to show it to me.

DENIS RANCOURT : Oui.

LE TRIBUNAL : Moi, je peux pas...

DENIS RANCOURT : Oui, je vais vous l'envoyer par courriel.

LE TRIBUNAL : Vous allez me montrer ça dans une petite motion dans laquelle vous allez annexer la copie - la cédule B puis ou la partie de la

5 cédule B et puis vous allez me montrer ça puis
là, bien on pourrait répondre puis on verra si
c'est quelque chose que on une mésappréhension ou
bien si c'est ça ou quoi que ce soit, mais là, je
peux pas décider ça.

10 INTERPRETER: A small motion where you're going
to attach Schedule B or part of Schedule B and
you're gonna show me that and then we'll be able
to reply and then we'll see if it's something
that is a misapprehension or whatever. Now, I
can't decide.

DENIS RANCOURT : D'accord.

LE TRIBUNAL : Bon.

15 DENIS RANCOURT : Est-ce que je peux vous
l'envoyer par courriel? Ça va être très court.

INTERPRETER: I can send it to you by email - be
there by email. It'd be very short.

20 LE TRIBUNAL : Non, non, mais on vous forcera pas
à - ils témoigneront pas tout de suite ces
experts-là là. Vous pourrez me présenter ça...

DENIS RANCOURT : C'est-à-dire que Camille...

LE TRIBUNAL : ...un beau matin, vous m'amènerez
ça.

25 INTERPRETER: No, no tomorrow morning you bring
that.

DENIS RANCOURT : Camille Nelson, c'est la
première témoin après la, après le [sic]
Professeur St. Lewis.

30 INTERPRETER: Camille Nelson is the first witness
after, after Professor St. Lewis.

LE TRIBUNAL : Bien, oui, mais c'est dans deux

jours ça. Vous pourrez préparer une petite motion là écrite puis me l'amener là.

INTERPRETER: But that's in two days. You can prepare a short motion in writing and bring it to me.

DENIS RANCOURT : D'accord.

INTERPRETER: Okay.

THE COURT: Okay.

MR. DEARDEN: The last last matter is, I've asked Mr. Rancourt to confirm the accuracy of two transcripts. One is the Malcolm X video that he's embedded in one of the articles in issue and the other is a radio interview that he gave on April 18th about the - dissecting the tort of defamation and to again avoid wasting time where he's gonna - I'm gonna cross him on those transcripts and for him to - I just don't wanna waste time like this, Your Honour. If he says, "Oh, no, page three is inaccurate.", and we're asking the jury to leave, there's no reason why he shouldn't be confirming the accuracy of those transcripts before he's crossed. I'm only gonna be using them so he's got lots of time.

DENIS RANCOURT : Okay, je vais les faire...

MR. DEARDEN: He's had lots of time. I asked him...

DENIS RANCOURT : ...un à la fois.

MR. DEARDEN: ...on May 2nd.

DENIS RANCOURT : Je vais les faire un à la fois. L'affi - le, le *transcript* d'un vidéo par Malcolm X, c'est le *transcript* d'un vidéo qui est - qui

fait partie intégrale du blogue dont on se plaint dans cette action et en diffamation, le contexte est tout. Le contexte est essentiel. Y'a aucun substitut pour ce vidéo, que de regarder le vidéo, qui dure trois minutes. Y'a aucun substitut. Il faut - quand le - quand on va montrer l'article dont on se plaint ici, en évidence, il faut le montrer au complet dans son contexte et ça inclut un vidéo ici, qu'il faut jouer. Et...

INTERPRETER: Okay, I'm going to deal with them one by one. One at a time. The transcript of a video by Malcolm X is a transcript of a video that is an integral part of the blog of which we're complaining in this suit. In defamation, the context is of everything. It's essential. There's no substitute for this video than to look at the video, which is three minutes in length. There's no substitute. You must, when we're going to show the article of which we're complaining here, in evidence, you have to show it entirely in its context and it includes a video that needs to be played.

LE TRIBUNAL : On verra ça dans le temps comme dans le temps, mais je comprends votre point...

INTERPRETER: Well, we'll deal with that and - when it's time. I understand your point...

DENIS RANCOURT : Et...

LE TRIBUNAL : ...oui.

INTERPRETER: ...yes.

DENIS RANCOURT : Et, et c'est pour ça que je ne

veux pas accepter un *transcript* parce que c'est comme si j'acceptais qu'on a pas besoin de voir le vidéo. Il suffit...

INTERPRETER: So, that's why I don't want to accept a transcript because it's as if I was accepting that we don't need to see the video.

LE TRIBUNAL : Non. Non, non, c'est pas le point. C'est pas le point. Le point, c'est pas qu'on a pas besoin de voir le vidéo. Vous pouvez même y référer vous-même dans le contre-interrogatoire ou quelque chose, mais la question, c'est pas ça. Là, c'est que...

INTERPRETER: No, that's not the point. That's not the point. The point is not that we don't need to see the video. You can even, you can even refer to it yourself in cross-examination. That's not the question.

THE COURT: What - so, if I understand, Mr. Dearden, you want to make - you want him to say that that transcript, that we find on his blog, is what?

MR. DEARDEN: Accurate. That it's been accurately transcribed so that we're not wasting our time...

THE COURT: So, it's not tampered with or anything like that.

DENIS RANCOURT : Okay.

MR. DEARDEN: I had it done by a court reporter.

DENIS RANCOURT : Donc, le - ce qu'il m'a envoyé par un *court reporter*, est même pas signé, est même pas certifié. Il veut que je fasse son

travail pour lui. Il veut que je - j'argarde - l'interview avec - au Japon qu'il parle là, ça dure plus d'une heure. Il voudrait que je m'asseois puis que je lise le travail d'un *court reporter* que je sais même pas son nom, qui a pas signé, qui a pas certifié le truc pour que je lui dise : « Oui, moi, j'accepte ça. » J'ai pas le temps de faire ça et, et...

INTERPRETER: So, what he sent me through a court reporter, it's not even signed, it's not even certified. He wants me to do his work for him. He wants me to - the interview with - in Japan, what he's talking about, is over an hour. He'd want me to sit and read a court reporter's work, don't know the name of the person, the court reporter didn't sign, didn't certify. He wants me to accept that. I don't have the time to do that.

THE COURT: Okay, well...

DENIS RANCOURT : ...c'est à lui de le mettre en preuve si il veut des *transcripts* de ça.

INTERPRETER: It's up to him to bring that up for evidence if he wants transcripts.

THE COURT: So, he doesn't want to do that. All right.

DENIS RANCOURT : Non.

THE COURT: So, insofar as the Malcolm, I don't think there should be any problem. It's not a long thing for the...

LE TRIBUNAL : Dans le cas du...

INTERPRETER: In the case of...

5 THE COURT: Obviously, in the case of the transcript, if you cross-examine Mr. Rancourt and he says, "I never said that.", then I don't know. You'll have to - we may be wasting a lot of time to show that it is and if, you know, at the end of the day, it's not useful but I...

MR. DEARDEN: We can play it live.

THE COURT: Hey?

MR. DEARDEN: Play it live...

10 THE COURT: We can play it live.

MR. DEARDEN: ...and put it up.

THE COURT: Sure.

MR. DEARDEN: He's put it up on the Internet.

THE COURT: Yeah, we can do that.

15 DENIS RANCOURT : Oui? Oui, j'ai, j'ai pas d'objection à ça. J'ai pas d'objection à le, à le montrer.

INTERPRETER: Yes, yes, I don't object to that. No objection to showing it.

20 MR. DEARDEN: But I'm using the transcript as well.

DENIS RANCOURT : Mais...

25 LE TRIBUNAL : Mais vous comprenez que il faut - je comprends que vous êtes sous vos gardes, mais il faut pas non plus exaspérer le jury là, monsieur Rancourt. Si ce qui est dans le transcript, vous savez que c'était exact ou la partie qui vous - auquel on vous a référé, c'est exact, je vois pas pourquoi que y'a un problème là tsé? Si c'est pas exact...

30 INTERPRETER: But you understand that - I

5 understand that you want to be careful but you don't want to exasperate your jury, Mr. Rancourt. If, if what's in the transcript, you know that it's exact or the part, part to which you've been referred is exact, I don't see why there'd be a problem. If it's not exact....

10 DENIS RANCOURT : Je l'ai - j'ai pas regardé le travail de son interprète et j'ai - j'ai - c'est même pas signé. C'est même pas - j'ai vu beaucoup d'erreurs dans, dans les travaux de traduction.

15 INTERPRETER: I didn't see the work of his interpreter. It's not even signed. I saw a lot of errors. The translation work, I saw a lot of errors in it.

LE TRIBUNAL : Okay, vous voulez c'était un *interview* qui s'est fait en français?

INTERPRETER: You mean it was done in French?

20 DENIS RANCOURT : Non, non, c'est que je, je voulais dire le, le rapporteur. C'est un vidéo de trois minutes ou, ou, ou peut-être un peu plus ou peut-être un peu moins. Je sais pas.

25 Monsieur Dearden vient de dire qu'il veut le montrer. Si il le montre et me dit : « Je parle de ça. » Et il, il me donne une feuille et dit est-ce que ça dit bien ce qu'il vient de dire? Je vais dire oui ou je vais dire non, dépendant...

30 INTERPRETER: Oh, no I meant the reporter. It's a three minute video, maybe more, maybe less, I don't know. Mr. Dearden says he wants to show

it. If he does, show it. And he says I'm talking about this and he says - and he gives me a sheet and says, "Is that what you said?" I can say yes, I can say no...

5 LE TRIBUNAL : C'était pour faciliter les choses, mais si vous voulez pas, ça règle le problème.

INTERPRETER: But it was to facilitate things - ease things. If you want or don't want, well, that's fine.

DENIS RANCOURT : Merci.

10 LE TRIBUNAL : D'accord. Bon. Est-ce que y'a - je pense qu'on a tout couvert? Parce qu'on avait couvert vos...

INTERPRETER: So, I think we've covered everything? Did we cover...

15 DENIS RANCOURT : J'aimerais juste passer en revue si on a tout couvert parce que j'ai...

INTERPRETER: I'd like to go over a list to see if we've covered everything.

20 THE COURT: Was there something else before we deal with...

MR. DEARDEN: No.

THE COURT: No? Okay. So, can we...

DENIS RANCOURT : Oui, oui, y...

INTERPRETER: Yes, yes.

25 THE COURT: Yeah?

DENIS RANCOURT : Y'avait, y'avait, y'avait des points que monsieur Dearden avait soulevés.

Monsieur Dearden était - okay, non, y'a - je, je suis perdu là. Je m'excuse.

30 INTERPRETER: Oh, there was, there was, there were points that Mr. Dearden had brought up. Mr.

Dearden was - okay no, well, I'm lost, I'm sorry.

LE TRIBUNAL : Oui, je pense qu'on a tout couvert ce qui était dans vos deux listes là.

INTERPRETER: I think we've gone over everything that populated your two lists.

DENIS RANCOURT : Okay. Alors...

INTERPRETER: Okay.

LE TRIBUNAL : Donc, je vais vous donner....

THE COURT: I'll...

LE TRIBUNAL : Je vais vous donner une décision concernant l'autre matière de ce matin là, la matière de qu'est-ce qu'on peut dire concernant les questions - les motions interlocutoires, si en tout on peut dire quelque chose puis de quelle façon et ainsi de suite. Je vais vous donner une décision là-dessus avant qu'on commence demain matin.

INTERPRETER: So, I'm gonna give you a decision, a ruling regarding the other topic of this morning, that topic of what we can say regarding the, the interlocutory motions if we can and how and all of that. I'll give you a ruling on that before we start tomorrow.

DENIS RANCOURT : Y'avait une autre question qui était devant vous, Monsieur le juge, que, que j'attends la réponse. C'est la possibilité d'avoir les, les audios enregistrements de ce qui se passe ici pour m'aider, étant - en temps que personne auto-représentée. Je n'ai pas les ressources que vous voyez ici. J'ai absolument besoin de pouvoir savoir qu'est-ce qui s'est dit,

des, des aides-mémoires dans mes notes. Je, j'ai demandé formellement ce matin que vous acceptiez que le service qui est offert, je puisse y accéder pour obtenir l'audio.

5 INTERPRETER: There was another question in front of you, Your Honour, for which I'm waiting for an answer, the possibility of having audio of what's happening here to help me as a self-represented person. I don't have the resource I have here.
10 I have the - it's necessary for me to have what I need for notes, self-help notes. I want to be able to have the service accessible to have access to it.

15 LE TRIBUNAL : Tout ce que je vous ai dit c'est que je vais vous donner une réponse à ça demain matin aussi après avoir regardé le protocole.

INTERPRETER: All I'm saying is that tomorrow morning, I'll give you a ruling on that after reading the protocol on that.

20 DENIS RANCOURT : Merci.

INTERPRETER: Thank you.

25 LE TRIBUNAL : Mais je pense - je ne crois pas que y'aille de problème, mais je vais - on va s'assurer que - qu'on suit le protocole.

INTERPRETER: I don't believe there will be a problem, but I want to ensure that, that we follow the protocol.

30 THE COURT: So, that's it then. Tomorrow morning, ten o'clock with the jury...

MR. DEARDEN: Thank you.

THE COURT: ...or one anyway.

MR. DEARDEN: Thank you, Your Honour.

DENIS RANCOURT : Merci, Monsieur le juge.

INTERPRETER: Thank you, Your Honour.

LE TRIBUNAL : Je pense je vais laisser ça ici.

INTERPRETER: I think I'm gonna leave this here.

THE COURT: I'll leave that there.

C O U R T I S A D J O U R N E D

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FORM 2

**Certificate of Transcript
Evidence Act, Subsection 5(2)**

I, Francine Bourque, certify that this document is a true and accurate transcription of the recording of Joanne St. Lewis v. Denis Rancourt in the Superior Court of Justice held at Ottawa, Ontario, taken from Recording(s) No. CR36_20140514_093101 which has been certified in Form 1, by R. Commodore.-

December 30, 2014

(Date)



(Signature of authorized person)

Videoplus Transcription Services ACT number 554-265-0147

This certification does not apply to Reasons for Ruling, which were judicially edited.

Court File No. CV-11-51657

SUPERIOR COURT OF JUSTICE

JOANNE ST. LEWIS

Plaintiff

v.

DENIS RANCOURT

Defendant

P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE JUSTICE M. CHARBONNEAU
on May 15, 2014, at OTTAWA, Ontario

APPEARANCES:

R. Dearden

Counsel for the Plaintiff

D. Rancourt

In Person

(i)
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Legend

[sic] - Indicates preceding word has been reproduced
verbatim and is not a transcription error.
(ph) - Indicates preceding word has been spelled
phonetically.

Transcript Ordered: June 28, 2014
Transcript Completed: December 30, 2014
Ordering Party Notified: December 30, 2014

THURSDAY, MAY 15, 2014

(10:05 a.m.)

MR. DEARDEN: Good Morning, Your Honour.

THE COURT: Good morning.

LE TRIBUNAL : *Bonjour.*

INTERPRETER: Good morning.

THE COURT: First of all, I understand one of the interpreters needs to be sworn. Is that the case? So, it's - we have a new person acting as the interpreter.

LE TRIBUNAL : Et peut-être vous approcher, indiquer si vous voulez jurer sur un document religieux ou être affirmé?

INTERPRETER: Please step forward and indicate whether you want to be sworn or affirmed.

PIERRE LACROIX : Ça va être une affirmation, Monsieur le juge.

INTERPRETER: Affirmed, Your Honour.

PIERRE LACROIX: AFFIRMED

(Testifying through interpreter - French/English)

DON BUTLER: Your Honour, could I just briefly address the Court?

THE COURT: Who are you, sir?

DON BUTLER: I'm a....

THE COURT: You want to step up here a minute and who are you?

DON BUTLER: I'm a reporter with the Ottawa Citizen. My name is Don Butler. I'm - I, I understand that there's been a judgment made or a decision made that there won't be

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simultaneous translation for members of the public during this trial?

THE COURT: Yes, well, I was asked do - one of the parties, Mr. Rancourt asked whether it could be simultaneous translation for the members of the court and I ruled, at that point, no. Is...

DON BUTLER: I'm covering this trial for the Citizen but unfortunately I'm not bilingual so it means that I would not really be able to cover representations in French.

Obviously, not a very ideal situation. Is it possible to reconsider that and provide translation for people in the, in the gallery?

THE COURT: Well, to be frank, I was asked off the cuff somewhat. I was kind of surprised by this. I had no idea what our - first of all, what are the facilities to do so really. I've never been involved - I've been involved in many bilingual trials and that request has never been made to me before and I've had reporters, some are from the Citizen and some from other newspapers and as I say, after 17 years, the first time somebody asks me to have the court translation for the public. So, I'm kind of in a - I don't know. So, a more formal - what that entails would have to be made. I don't know what it entails.

DON BUTLER: I mean, I'm not a regular court reporter but I have attended court

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proceedings before and there has been translation offered in the past that I've been present for so....

THE COURT: Yeah, well, you have a different experience than I have.

DON BUTLER: No doubt I do.

THE COURT: Because - and do you have any idea? Well, maybe I can ask - I can inquire from court administration what that entails. Do you know, Mr. Registrar, what it entails to provide simultaneous translation for the public?

INTERPRETER: I do, Your Honour.

THE COURT: Oh, we have the interpreter who may be can - has some information that would be useful.

INTERPRETER: I'm the staff interpreter, Your Honour, on this trial. It can be, it - the interpretation....

THE COURT: Yes, please step up. Yes, thank you.

INTERPRETER: The interpretation can be provided. There is that facility, if you so order it. We would need a five or ten minute break to make arrangements from a technical perspective.

THE COURT: So, what happens, the members of the public who need the interpretation, may then - are equipped with some kind of a hearing aid?

INTERPRETER: Individuals interested will have to attend the interpretation office on

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the third floor, at the end of the hall.

They will have to fill out a small slip.

THE COURT: Yes.

INTERPRETER: They will have to surrender a valuable piece of ID, either a driver's licence or a credit card.

THE COURT: Okay.

INTERPRETER: As a, as a guarantee and then they will be given a device that will pick up the signal just as the other devices pick up and they will....

THE COURT: So, it's just - their - they'd be then in the same position as Mr. Dearden, for example, who's using one of these apparatus...

INTERPRETER: Correct.

THE COURT: ...at his counsel table?

INTERPRETER: Correct. Now, the interpreter would also point out, to be mindful, Your Honour, that the interpretation currently being provided and planned for with the team in place is unidirectional. That means only what is said in French is going towards English. There is no English going towards French.

THE COURT: Okay, well, right now we don't have that problem. All right? Nobody has requested to hear what - to have a translation or interpretation of the English.

DENIS RANCOURT : Monsieur le juge, si je peux faire juste une petite très courte soumission? Dans ce procès, dans tous les

5 motions jusqu'à maintenant, il y a eu l'accès qu'on demande en ce moment et ça été normal et ça été automatique. Quelques fois, on a utilisé des équipements qui sont déjà prévus dans les bancs, quelques fois pas. Dans ces - je sais pas pourquoi dans cette salle on ne pourrait pas utiliser des équipements qui sont déjà dans les bancs. Ça, j'ai pas compris, mais c'était...

10 INTERPRETER: Your Honour, if I can make a small submission? Up to this point, there has been a small request, which has been done at times. We have used information that was available and I don't know why in this room, we would not be able to use the equipment, which is available in the system. That, I don't understand.

15 LE TRIBUNAL : Bon, bien, on va suivre...

DENIS RANCOURT : Oui.

20 LE TRIBUNAL : ...c'est évident que l'interprète est au courant du système.

INTERPRETER: What will follow, obviously, the interpreter knows what the system is about.

25 DENIS RANCOURT : Oui, mais c'est, c'est, c'est la norme et aussi un dernier point, Monsieur le juge, personnellement, je fais la soumission que ça serait consistant avec le principe de la cour ouverte, ce qu'en anglais on appelle *the open court principle*, qui est un principe très important et aussi avec les droits de langue qui sont garantis par le

30

gouvernement. Donc, j'estime que ça serait très important.

INTERPRETER: Yes, that is the standard but another point, Your Honour, I'm personally submitting that this would be consistent with an open court concept, open court concept as in English, the open court principle, which is a very important principle and also with language rights that are guaranteed by the government. Therefore, I would consider that as being very important.

LE TRIBUNAL : C'est pas - c'est pour faciliter la compréhension, mais je veux dire c'est pas fait de façon automatique à moins que quelqu'un en ait de besoin, monsieur Rancourt. D'accord. Bon...

INTERPRETER: This is to facilitate the understanding. This is not done automatically unless someone needs that. Very well.

INTERPRÈTE : Ce que je peux vous indiquer, Monsieur le juge...

LE TRIBUNAL : Oui.

INTERPRÈTE : ...c'est que le, le bureau des services d'interprétation s'en remet toujours à la directive du tribunal.

INTERPRETER: What I can tell you, Your Honour, is that the interpretation office, the interpreters, that always refers to the Court's decision.

LE TRIBUNAL : Oui. Bon. Mais si c'est aussi facile que monsieur l'interprète m'a

dit, on peut le faire. À ce moment-là, on peut prendre quelques minutes puis le faire.
INTERPRETER: Well, as I said, well, if it's - is so easy as the interpreter has stated, we can do this. We can take a few minutes to ensure this.

THE COURT: We can then - apparently it's not a very difficult thing technically, to do. Certainly, I have no difficulty with doing it, if that's the case, as I say.

DON BUTLER: Thank you, Your Honour.

THE COURT: All right. So, let me just - I'm trying to speak in English a little bit here, so it - we won't need that translation for just a little while, so that I tell the parties.... Now, where did I write this?

Oh, yeah. No. Well, there you go, I forgot it in the.... I had a ruling on the - ruling in relation to the interlocutory proceedings, which obviously, I left - let me make sure I don't have it here. All right. So, we'll adjourn and break for a little while to allow the system to be - or for the members of the public, who will need the assistance of the interpretation to obtain a digital apparatus in question, and to go at the office to sign or to provide this identity documentation and to have the matter set up accordingly. I made - there was a question that came from the - in relation to the jurors. We can tell the juror they can bring their water bottles. So, you can tell them that.

CLERK REGISTRAR: Thank you, Your Honour.

THE COURT: All right. So, let's break for 10 minutes to try to set this up.

(10:14 a.m.)

R E C E S S

U P O N R E S U M I N G :

(10:30 a.m.)

THE COURT: So, everybody's set now? All right. Now, before we bring the jury in, I had a number of rulings to make or answers to certain requests. One was a request by Mr. Rancourt for the daily release of the digital recordings and that's fine, I will order that the - that you may obtain those. The protocol is that you must attend and sign a undertaking, which sets out that you - it's a form that's already established but you may not use this for any other purpose than to prepare and to assist you in the trial. So, that's fine. Now, there was also an issue of what use can be made of the - any evidence of - concerning the interlocutory matters.

R E A S O N S F O R R U L I N G

CHARBONNEAU, J. (Orally):

So, my ruling is that the plaintiff may introduce into evidence specific written or oral statements made by the defendant in the course of the interlocutory proceedings, which were made naturally since the publication of the alleged libel in order to

offer this to the jury's consideration as evidence of malicious conduct of the defendant. The statements may have been made orally in court or elsewhere or in writing, in pleadings, affidavits or factum. Naturally, the defendant will be entitled to provide evidence why the statements introduced were made by the defendant and the context of those statements at that time, for that they should not be interpreted in any other way than what he suggest they should be interpreted and that therefore, they were not malicious.

Now, the plaintiff, however, may not introduce in evidence globally, the list of interlocutory motions that were brought either at interlocutory motions or appeals that were brought to other courts nor argue in a global matter that the interlocutory proceedings by themselves, the number of interlocutory proceedings in themselves indicate malice. To do so, I rule would risk opening collateral issues, which will only serve to delay the trial and confuse the jury.

All right. So, those are the two rulings, one and two. So, we will have - you will have to remove naturally as we had discussed, if it is there, your list of interlocutory proceedings.

MR. DEARDEN: Your Honour, will we take a brief break after Mr. Rancourt's opening is over so that we can work out that part?

THE COURT: Yes.

MR. DEARDEN: Okay, thanks.

THE COURT: Sure.

DENIS RANCOURT : Monsieur le juge, est-ce que je pourrais avoir un court *break* après le, le *opening statement* de monsieur Dearden pour ajuster ce que j'allais dire, étant donné le - la décision que vous venez de donner?

INTERPRETER: Your Honour, if I could ask for a short break after Mr. Dearden's opening statement to adjust what I was going to say, given the decision you've just made.

LE TRIBUNAL : Oui, je vais vous donner une courte période, oui.

DENIS RANCOURT : Merci.

LE TRIBUNAL : Vous avez besoin de?

INTERPRETER: Yes, I will give you a short preparation time. You need what?

DENIS RANCOURT : Quinze minutes.

INTERPRETER: Fifteen minutes.

LE TRIBUNAL : D'accord.

DENIS RANCOURT : Merci.

INTERPRETER: All right.

LE TRIBUNAL : Bon, bien...

THE COURT: I suppose we can ask the jury to come in then.

CLERK REGISTRAR: All rise.

...JURY ENTERS

(10:38 a.m.)

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CLERK REGISTRAR: All members of the jury are present, Your Honour. You may be seated.

THE COURT: Good morning. Good morning.

JURY MEMBER: Good morning.

THE COURT: You may - you noticed people rise when you come in and that's because like me, for this trial, you're judges but as you get to your chairs, you can simply sit down.

Good news. There was - I've revised my decision regarding paying the parking. I, in thinking about it, I think it's unfair for those who are travelling by car, who pay their - both their gasoline and usage of the car, we know that that's a - that is a cost. That they also have to pay \$16 apparently for parking, so I will make an order that the administration pay for the parking, up to \$16. All right. So, we're ready to hear the case now, ladies and gentlemen, as I told you, it's now time for us to listen to the parties, counsel, Mr. Rancourt and we will start with the opening statement from Mr. Dearden.

MR. DEARDEN: Thank you, Your Honour.

OPENING STATEMENT BY MR. DEARDEN:

MR. DEARDEN: Good morning, ladies and gentlemen of the jury. As you know, from when we selected you on Monday, my name is Rick Dearden. I'm from the law firm of Gowling Lafleur Henderson and I have the

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opportunity to speak to you now about what this case is about. I'm assisted by my

associate, Anastasia Semenova, and you know my client is Professor Joanne St. Lewis.

COURT REPORTER: Mr. Dearden, I'm sorry but you have to stand in front of a mic. I'm sorry. (Inaudible.)

MR. DEARDEN: I am not allowed to pace.

COURT REPORTER: Sorry.

MR. DEARDEN: Professor St. Lewis has been a law professor at the University of Ottawa for over 20 years and she's been a lawyer for 30 years and you are about to hear from Professor St. Lewis and her background, part of which will be that she was the first black law student at her law school at the University of British Columbia. Professor St. Lewis was also the first black person to be elected as a bencher of the Law Society of Upper Canada and what is that creature? The Law Society of Upper Canada is the body that governs me as lawyers. They give us our licence to practice law. They discipline us as the benchers, which is like a board of directors, a board of governors, if you wish. They govern the 40,000 plus lawyers in this province. She was the first black person to be elected and was in that - elected two times after the first election and was there for eight years. She's fought all her life against racism, against discrimination and

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for equality rights and you will hear from Professor St. Lewis about her experience in

dealing with systemic racism. So, what is this case? This case that you're about to hear is called the defamation action.

Another name is libel action. Okay? It's the same thing. Defamation action, libel action. It's not a slander action. A

slander action just, as an aside, is when two people are - or a person is talking orally, like person to person, orally. It's not -

libel is print or it's TV broadcast, radio broadcast. So, this is a libel action about something that the defendant published on his

website and there are, in this country and in this province in particular, defamation laws or libel laws that protect a person's

reputation from defamatory publications. And this case involves two articles published by the defendant, Mr. Rancourt, on his website,

which he calls U of O Watch. Mr. Rancourt is a former physics professor at the University of Ottawa. His employment was terminated by

the university seven years before he published the two articles that you are going to decide whether or not defamed Professor

St. Lewis. Professor St. Lewis claims that those articles did defame her and she is asking you to find that those two articles

damaged her personal reputation as well as her professional reputation as a lawyer and

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as a law professor. A good reputation is closely related to the worthiness and dignity

of us as individuals. A good reputation is an attribute that our law protects. Just as much as freedom of expression is protected in this country, so is a good reputation. So, there's limits on what can be written about a person. And let me give you another aside.

Our laws of libel in Ontario are very different from the laws of libel in the United States of America. So, I'm asking you to erase all memories of movies and TV programs that you've watched on NBC or CBS or Fox; erase that, because what goes down in the States is different and His Honour will be instructing you at some point in this trial, about what the laws of libel are in this province. Okay? So, what is defamation? What is it? It's a publication, which tends to lower a person in the estimation of right-thinking members of society, and that would be you. Okay? It tends to lower a person in the estimation of right-thinking members of society or it's a publication that exposes a person to hatred or ridicule or contempt. Putting it another way, a defamatory statement is one, which has a tendency to injure the reputation of the person to whom it refers. So, a statement that lowers the person in the estimation of right-thinking members of society, you, it

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causes the person to be regarded with feelings of hatred, contempt, ridicule, fear or disaseem [sic] - disesteem is defamatory. It's a defamatory statement. The very essence of a defamatory statement is a tendency to injure reputation, which is to say all aspects of the person standing in her community. That's what defamation is. So, what does Professor St. Lewis have to prove in this libel action? Three things. One, that the words complained of were published by the defendant to a third person and he's admitted that. So, you don't have to decide that. He's admitted the words were published; words that are complained of were published. Two, that the words of - complained of by Professor St. Lewis, refer to her and you don't have to decide that one either, because the defendant admits that what he published refers to Professor St. Lewis. And then the third element of the cause of action for libel, excuse me, is that the words complained of were defamatory in the sense that they would tend to lower Professor St. Lewis' reputation in the eyes of a reasonable person. And that's you. You're the reasonable person here. You're the right-thinking members of society. And the defendant says he did not defame Professor St. Lewis with the two articles he wrote. So, before I tell you about the

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statements that the defendant published in those two articles in the U of O Watch on his website, let me tell you the backdrop of what those articles were dealing with. What happened here? Okay? You're gonna hear testimony from Professor St. Lewis that in November 2008, okay, November 2008, she was asked by the University of Ottawa to evaluate a student report that had just been publicly released and the student report was titled "Mistreatment of Students, Unfair Practices and Systemic Racism at the University of Ottawa." You will be seeing that when Professor St. Lewis gives her evidence, the Student Appeal Centre 2008 Annual Report and the title, "Mistreatment of Students, Unfair Practices and Systemic Racism at the University of Ottawa." The - that student report dealt with the university's academic fraud process. So, academic fraud in - as examples, somebody said he's alleged to have cheated on their exam or they plagiarized a paper, okay? They disagree with the prof saying, "You cheated on your exam." or "You have plagiarized part of your paper." There's a process at the university that you can appeal and that's the academic fraud process. Okay? And that report, as you can tell, says there's systemic racism. Students are being treated unfairly, mistreated. It was dealing with that academic fraud process,

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says there's systemic racism in it.

Professor St. Lewis will testify about her

expertise in dealing with systemic racism.

And she agreed, the university asked

Professor St. Lewis, "Will you evaluate that

report for us?" And she agreed to evaluate

that report. And her point of contact was

Dr. Robert Major who, at the time, was the

Vice-President of Academic at the University

of Ottawa. So, he was one level below

President Allan Rock at the university and

he's going to testify at this trial about the

mandate that he gave Professor St. Lewis and

his interactions with Professor St. Lewis

before and after she finalized her evaluation

report about that Student Appeal Centre

Report that accused the university of

systemic racism. And Professor St. Lewis

will testify about the drafting of her

evaluation report and she's going to tell you

a bit about the 10 recommendations she made

to the University of Ottawa about its

academic fraud process. And the first

recommendation that she made to the

university was to conduct an independent

assessment to determine whether systemic

racism plays any part in the academic fraud

process. The fact that the report did not

succeed in its methodological attempts does

not mean that there is not a problem that

should be addressed. The university is bound

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by its obligations under the *Ontario Human Rights Code* and is committed to an inclusive community. That was recommendation number one. She made nine additional recommendations to the university to do things about their procedures in its academic fraud process. And she'll be speaking to that when she testifies. So, that's what happened November 2008. Now fast forward to February 11th, 2011. So, more than two years later, after Professor St. Lewis submitted her final evaluation report, the defendant published the first article that's in issue in this libel action. And that is this article. This article, ladies and gentlemen, entitled, "Did Professor St. Lewis Act as Allan Rock's House Negro?"

COURT REPORTER: You have to stand.... It's okay. I'm...

MR. DEARDEN: I know that.

COURT REPORTER: (Inaudible.)

MR. DEARDEN: There will be times...

COURT REPORTER: (Inaudible.)

MR. DEARDEN: ...that I don't listen...

COURT REPORTER: (Inaudible.)

MR. DEARDEN: ...to the court reporter because I have to hand you things here. So, I've made a copy, ladies and gentlemen, if you could just pass them down, of the first article in issue here. So, you see, the defendant has put a photograph of Professor

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St. Lewis under the headline, "Did Professor Joanne St. Lewis Act as Professor - or as

Allan Rock's house negro?" Allan Rock, by the way, is the President of the university. He had just become president in July of 2008 and is still president today. And this article, I have numbered for you, so the path - there are seven passages in issue in this libel action. You can see are numbered one to seven and I've highlighted in yellow the words that Professor St. Lewis complains about and alleges that have certain meanings, defamatory meanings, which we'll get into when we get in the trial. So, these are the words in play, ladies and gentlemen. These are the words that are in play and meanings flow from each one of those seven paragraphs. We call them stings in the libel business. Okay? Each one of those seven stings has their own meanings that have been pleaded in a Statement of Claim by Professor St. Lewis to mean certain things and we are gonna submit, at the end of this trial, in questions that you'll see, that those meanings are defamatory of Professor St. Lewis. So, that was what was published over two years after Professor St. Lewis submitted her evaluation to the university of the Student Appeal Centre's report, annual report, that claimed students were being mistreated and there was systemic racism in

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the academic fraud process. Now, Allan Rock will testify at this trial, as well, and he's

a graduate of the University of Ottawa's Law School and some of you may know that he was a Liberal Party of Canada Cabinet Minister when they were in power. He was the Minister of Justice, the Minister of Health and he also held the industry portfolio. He was the Minister of Industry for a while. And then he became Canada's Ambassador to the United Nations in New York. And he will testify about this S.A.C. Annual Report, the Student Appeal Centre Annual Report and about whether Professor St. Lewis acted as his house negro. He's gonna testify. Now, how was it that Professor St. Lewis discovered that the defendant had published this article, "Did Professor Joanne St. Lewis act as Allan House [sic] - Allan Rock's house negro?" You're gonna hear testimony from Professor St. Lewis that she did a Google search on her name, Joanne St. Lewis. And on the first page of the Google search results, you know, Google when they search, they give you snip-its of what article they find or what item they find and she reads, "Did Professor Joanne St. Lewis act as Allan Rock's house negro?" And she's going to testify about the impact that it had on her the moment she read those words on a Google first page search results, and she's gonna testify about her meetings

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shortly after discovering that item on the Google search, her meeting with the then Dean

of the Law School, Bruce Feldthusen, and also she had a meeting with a law professor colleague, John Currie, shortly after she discovered this item on Google. And both of them will be testifying. Both the former Dean, Bruce Feldthusen, and Professor John Currie will be testifying about their observations of the impact that they were seeing on Professor St. Lewis when she was telling them that she was referred to as acting as a house negro. So, the defendant was served with a notice on May 16, 2011, by me. He was served and you're gonna see it too in the evidence when we call Professor St. Lewis. And the demand was made to immediately take down, from his website, this article that referred to Professor St. Lewis as acting as a house negro. What did he do in response? He did this. He published a second article. He published this article and this time he chose to put my photo in it. "Top-dog Canadian Freedom of Press lawyer targets U of O Watch." And I'll give you that article. So, what's he do? That's - this is a response to a notice that says, "This article of February 2011 defamed Professor St. Lewis. Take it down." And rather than take it down, he publishes a couple of days later, May 18th, I gave him

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notice, May 16th, sting number eight, which is, "I did not say that Professor St. Lewis acted like a house negro because she is black. I said it because it was reasonable concluding the matter that she acted like a house negro and because it's my reasoned opinion that she acted like a house negro. She did so while attempting to discredit a 2008 student union report that alerted the university to its now more than evident problem of systemic racism." And then he puts in the link. So, he got a second notice of libel. Two days later, May 20th, 2011, I served him with another notice of libel to take down both of these publications. And I guess you can guess why you're here. He didn't. He didn't. He didn't apologize. He didn't retract and you will hear testimony from witnesses who will provide observations of the impact on Professor St. Lewis of these two articles that say she acted like a house negro and you're also gonna hear evidence from witnesses about their observations of the impact on Professor St. Lewis about the defendant's conduct of his defence for the past three years. Okay? We're in 2014. The notices were May of 2011. So, you're gonna hear from Professor St. Lewis' mother, Celine St. Lewis. You're gonna hear from her brother-in-law, Denis Laberge. You're gonna hear from a friend, a Department of Justice

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lawyer named Jacqueline Beckles and you're gonna hear from a former student, Saron, and

I told you when were selecting the jury, I was always gonna call her Saron, but let me try this, Gebresellassi.

UNKNOWN FEMALE VOICE FROM THE BODY OF THE COURTROOM: Close.

MR. DEARDEN: Saron Gebresellassi. Soon to be a lawyer, she gets called to the bar in - this fall. That doesn't mean a bar where you're watching the Habs move on to the third round of the Stanley Cup playoffs, by the way. Actually, I'm not sure, Your Honour, why we call it a bar but anyways, she's gonna become a lawyer, licensed to practice law in September. She was a U of O law student when Professor St. Lewis sued the defendant in 2011 and she's gonna indicate what the students' reaction was to these two articles in the lawsuit. And then you're gonna hear from Charlynn MacCharles. She owns and operates a counselling service out in Kanata. She has a B.A. in psychology; a Masters degree in Social Work and she's been providing supportive counselling to Professor St. Lewis during this litigation and she's gonna testify about her observations of the impact of the defendant's publication and his conduct on Professor St. Lewis. Now, as I mentioned earlier, there will be questions that you have to answer. That will be

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provided to you in a booklet, spiral bound booklet and the first question is going to be

whether the natural and ordinary meaning arising out of these eight stings that you have highlighted here, arising out of those, are defamatory? That's the first set of questions that you're gonna have to answer. And if you find that even one of those statements is defamatory, there's two presumptions that the law makes in our province. Okay? That the words are false. It's presumed they're false. And secondly, that Professor St. Lewis suffered damages. She doesn't have to prove that the defendant intended to harm her. It's presume that she suffered damages. And then it kicks into the defendant to make out a defence and I'm gonna let him, of course, speak to what his defences are; fair comment in public interest, responsible communication, and what they're called. Another question you're gonna have to answer is whether the defendant acted maliciously. And it's - Professor St. Lewis is gonna testify about his conduct for the past three years and which goes to the issue of malice. It can be proffered as evidence of malice, for you decide if it is or isn't. And why that's relevant, it is, is important for two reasons. One, if you make a decision that the defendant was malicious, that defeats his defences; defeats his

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defences. And two, there's three different types of damages in a libel action that you

also have to make a decision about. You have aggravated damages as a category and punitive damages as a category and you have to have malice to award those damages. Okay? So, the types of damages are one, general damage. And as I said, damages presumed, if the words were defamatory and then there's - so they're compensatory. You decide, in light of the - what you think is the gravity of the defamation in all the other circumstances that you're gonna hear about, what amount of damages would vindicate the plaintiff's reputation? You decide that. Aggravated damages, they're also compensatory but there, you take into account the defendant's conduct and whether it was high-handed and increased the humiliation and anxiety that the plaintiff suffered, that Professor St. Lewis suffered, such that you want to add an additional amount of damages for his conduct aggravating the anxiety and humiliation arising out of these publications. And as I told you, Professor St. Lewis is gonna give evidence about the defendant's conduct. Punitive damages, they don't have anything to do with compensation. They're to punish. They're - if you conclude that the defendant's conduct was so malicious, oppressed with a high-handed, it offends your

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sense of decency, you can award punitive damages against the defendant. So, that gives you a flavour of the questions that you're going to have to answer and it gives you a flavour, ladies and gentlemen of the jury, what this case is about. I hope I gave you a roadmap of that and I thank you very much for listening to me.

THE COURT: We will rise for 15 minutes and then Mr. Rancourt will make his initial opening statement.

...JURY RETIRES (11:04 a.m.)

R E C E S S

U P O N R E S U M I N G : (11:05 a.m.)

LE TRIBUNAL : On appelle le jury.

INTERPRETER: Shall call in the jury.

CLERK REGISTRAR: All rise.

...JURY ENTERS (11:24 a.m.)

CLERK REGISTRAR: All members of the jury are present. You may be seated.

LE TRIBUNAL : Oui, monsieur Rancourt.

INTERPRETER: Mr. Rancourt.

DENIS RANCOURT : Merci, Monsieur le juge.

LE TRIBUNAL : Vous pouvez procéder à votre....

INTERPRETER: You may, if you would, proceed to your....

OPENING STATEMENT BY DENIS RANCOURT:

DENIS RANCOURT : Alors, je suis le défendeur

et je suis autoreprésentée. Je ne suis pas un avocat, mais je peux vous dire qu'il manque des gros morceaux dans la chronologie que monsieur Dearden vous a communiquée. Je - d'abord, je veux commencer par vous dire que je ne connais pas - absolument pas personnellement le professeur St. Lewis. Je l'avais vu donner une présentation publique il y a plusieurs années. C'est la seule fois où je l'ai vu en personne. Je n'ai jamais lu - eu, eu de contact avec elle, excepté à travers ma critique sur mon blogue. Je n'ai rien de personnel contre la professeure en tant que personne ou professeure. Ma critique se limite entièrement à son rapport fait pour l'université. Alors, oui, j'ai fait cette critique de professeur St. Lewis et directeur, Allan Rock. C'était une opinion basée sur des vrais faits. Ce n'est pas illégal d'avoir une opinion sévère, même insultante, basée sur des vrais faits. La loi permet ce genre de critique. À la base ce qui c'est passé, c'est qu'en 2008, les étudiants avaient écrit un rapport dénonçant un racisme systémique contre eux à l'Université d'Ottawa. Un racisme de traitement contre eux qui me semblait, à moi, un bon rapport qui disait la vérité. C'était très sérieux et très inquiétant. C'était le premier rapport de racisme systémique à

l'Université d'Ottawa. Le recteur de

l'université, Allan Rock, a demandé à une professeure de droit, une professeure noire, d'évaluer le rapport étudiant et dans son évaluation, la professeure a exprimé que le rapport étudiant était fautif et ne permettait pas de conclure même une évidence, c'est à dire une preuve pour un racisme systémique. Moi, je voyais ça - je voyais un important rapport étudiant sur une vérité - sur un véritable problème de racisme. J'étais en contact avec les étudiants. J'étais en contact avec l'auteur de ce rapport et je voyais ce rapport contrer par l'administration de l'université en demandant une critique du rapport étudiant comme première réponse. C'était la toute première chose qu'il fallait faire, c'est répondre avec, avec un autre rapport, le rapport d'étudiant et à - dans cette période-là, ça été la seule réponse et je voyais le résultat du rapport d'évaluation. Je voyais un rapport d'évaluation de la professeure, qui lui, à mon sens et mes yeux, était fautif et partial, à ma lecture. Dans toute cette affaire, il faut distinguer deux choses : le racisme et la politique raciale. C'est pas la même chose. Le racisme, c'est le racisme que subissent les étudiants, qui ont le malheur de le subir à l'Université d'Ottawa, qui est une grande institution, qui contient

40 000 étudiants. C'est comme une ville. Il

s'en passe des choses et c'est pas toujours -
c'est pas toujours gai. Alors, le vrai
racisme, c'est ce racisme contre eux tandis
que la politique raciale, c'est la demande du
recteur. C'est le rapport de la professeure
et c'est ma critique publique sur un blogue,
de ce rapport de la professeure. Ça, c'est
dans le contexte de la politique raciale et
de la politique institutionnelle. Ce blogue,
je l'ai toujours fait dans ce style. Je l'ai
toujours fait avec un style provocateur, un
style direct et j'ai jamais eu peur que ça
insulte des administrateurs ou des gens qui
faisaient leurs devoirs, mais qu'à mes yeux,
avaient un manquement. J'ai, j'ai, j'ai
toujours fait ça depuis que j'ai commencé mon
blogue et mon blogue, je l'ai commencé en
2007, avant que je sois congédié et je l'ai
écrit de cette façon-là depuis 2007 jusqu'en
2009, où j'ai été congédié et entre 2007 et
2009, j'ai eu l'occasion de critiquer des
vice-recteurs pour avoir altéré des documents
qu'ils donnaient à des étudiants et je l'ai
dit ouvertement et j'ai, j'ai montré - bien,
j'ai fait - mis des liens à ces documents,
etcétera, et j'ai critiqué le recteur de ne
pas corriger ces erreurs-là et d'admettre ce
genre de chose. Ça, c'est la nature de mon
blogue. J'ai toujours bloqué de cette façon-
là quand j'étais professeur et après. Je

défendais, en bloquant comme ça, je défendais

le rapport étudiant en critiquant la réponse de l'université et en expliquant aussi, dans mon blogue, la nature politique et raciale du conflit et je l'ai fait dans des termes, comme j'ai dit, que j'utilisais typiquement.

C'était direct. C'était provocateur.

C'était dérangeant, mais c'était selon les principes de ce blogue et d'ailleurs, le blogue - on vous a montré le, le *poster* du blogue, si je peux me permettre, la toute première - le tout premier paragraphe ici explique la nature du blogue. C'est un paragraphe par deux des plus grands penseurs de notre époque, Foucault et Chomsky, qui en '71, discutait à propos de l'institution et des politiques institutionnelles et qui explique pourquoi on doit critiquer les universités fortement pour exposer, que mêmes si elles ont une apparence de justice, elles, elles font de l'oppression dans la société.

Alors, y'a ce discours entre Chomsky et Foucault qui est la justification, si on veut, le mandat de mon blogue. Alors, en gros, ce qui c'est passé, c'est que et, et, et je vais vous dire tout de suite, c'est pas vrai que j'ai attendu deux ans avant de faire cette critique. Ça, c'est - il manque des morceaux là. Tout de suite, j'ai fait une critique dans un article très long et détaillé sur mon blogue et je vais vous en

parler dans quelques instants. Tout de suite

en, en 2008. Alors, voici. Le centre d'appel des étudiants de l'université, en 2008, a fait ce rapport où il a montré la chose suivante : soit - 71 pour cent des 48 cas de fraude, de plaintes dans la période d'étude était contre et donnait lieu à des gros problèmes entre l'étudiant qui était accusé de fraude et l'administration. Ces étudiants-là, 71 pour cent, étaient des étudiants non blancs, des minorités de couleur visible. Alors, c'était ça une des statistiques dans le, le résultat. Pour interpréter une telle statistique, il faut avoir une connaissance des statistiques. Il faut pouvoir se dire, est-ce que 34 des 48 étudiants, dans l'échantillon, c'est significatif? Est-ce que ça veut dire quelque chose? Comment est-ce qu'on fait ce calcul? Comment est-ce qu'on peut savoir que en toute probabilité, y'a un vrai problème ou en toute probabilité, y'en a peut-être pas un problème? C'est une question de statistique et la professeure St. Lewis n'a pas cette expertise et n'était pas donc qualifiée pour critiquer cette donnée-là en particulier. Ça, c'est juste un des problèmes que, que moi en tant que physicien, en tant que scientifique, j'ai tout de suite reconnu en regardant les chiffres. Je peux faire ce calcul et je vais montrer que j'ai - j'avais

fait ce calcul. Ça va être dans, dans mon

évidence, dans ma preuve. Alors, plutôt, plutôt que - l'université, ce qu'elle a fait, suite à ce rapport, plutôt que de mettre sur pied un comité d'évaluation du problème, l'université a agi pour, à mon sens, à mes yeux, minimiser le rapport étudiant parce que c'était une crise médiatique. Tout de suite quand le rapport étudiant est sorti, y'avait beaucoup de, de, de - d'articles dans les médias à propos de ce rapport. Ça, c'est un gros problème pour la corporation, qui est l'Université d'Ottawa, et donc, il fallait compter ça et ils ont choisi d'obtenir un rapport très rapidement. Le rapport a été fait - le rapport de la professeure a été fait très rapidement et tout de suite, y'a eu une contre-médiation où on a expliqué que l'expert, qui avait fait le rapport d'évaluation, trouvait que y'avait pas de problème et on en a parlé dans les médias. Alors, la preuve que je vais présenter va montrer que la professeure, qui a écrit le rapport, d'une part, n'était pas qualifiée pour évaluer des données statistiques des étudiants et deuxièmement, son rapport ne peut pas raisonnablement être caractérisé d'indépendant parce que dans la première phrase de son rapport, elle dit ceci est un rapport indépendant et des officiers de l'université, comme monsieur Robert Major,

qui va témoigner, avait dit : « On attend un rapport indépendant. » L'idée, c'était d'avoir - de pouvoir présenter un rapport qui était pas simplement un rapport interne. C'était l'idée, mais je peux vous dire que - je, je vais présenter des preuves que - qui, qui, qui n'est pas raisonnable de conclure ça. Bon. Alors, donc, la chronologie est comme suit : y'a mon blogue qui est créé en 2007. Le rapport du centre étudiant sort en 2008, en novembre, je crois, et il sort par - c'est le syndicat des étudiants sous-diplômés qui a - qui a un centre d'étude, qui est le Centre des appels étudiants, qui a publié ce rapport. C'est - la directrice, a un diplôme en droit. La directrice a les compétences nécessaires pour occuper son poste et ensuite, il y a eu le rapport et la directrice va être une de mes témoins. C'est madame Mireille Gervais. Ensuite, y'a eu le rapport de la professeure, les médias et tout de suite, en 2008, immédiatement après son rapport ou presque, en décembre 2008, j'ai publié le premier article blogue sur cette question. Donc, il a - il ressemble à ceci que vous allez le voir dans la preuve. Là, excusez-moi, j'ai mis des marques ici là, mais ça ressemble à ça et il est intitulé « *Rock Administration Prefers to Confuse 'Independent' with 'Internal' rather than Address Systemic Racism.* » Et dans cet

article qui est plus long que les articles

qui sont venus après, je passe en détail les problèmes avec le rapport de la professeure et je fais une critique détaillée et je mets en question les dépendances du professeure et je fais toutes les mêmes critiques que j'ai fait plus tard dans mes blogues. Toutes les mêmes critiques et y'a eu aucun - aucune - y'a eu aucun *feedback* de la part de la professeure vis-à-vis ce premier blogue. Donc, ça, ça avait été détaillé. Ensuite, plus tard en 2011, le, le Centre de recours étudiants, c'est-à-dire les auteurs du premier rapport étudiant, ont fait une demande d'accès à l'information et ils ont demandé tous les documents qui étaient rattachés à ce qui c'était passé avec ces rapports-là. Y'a une - y'a une loi qui permet l'accès à des documents d'une institution comme l'université et ils ont utilisé cette loi. Ils ont fait une demande officielle, sous la loi, pour tous les documents et ils ont obtenu des documents et ils ont mis certains de ces documents-là sur l'Internet et ils ont écrit un, un, un rapport sur blogue, leur blogue à eux, expliquant que y'avaient des évidences que peut-être ce rapport n'avait pas été indépendant et y'avait - là, je cite pas exactement le titre de l'article blogue là, mais ils ont écrit un blogue. Vous allez le

voir en évidence. Et y'avait ce lien au

document d'accès à l'information. Moi, je suis, tout de suite, aller voir ces documents d'accès à l'information et à mon regard, à mes yeux, les documents confirmaient - c'était pour moi, une preuve que y'avait eu disons - c'était une preuve d'un manque d'indépendance de ce rapport. Y'avait des communications entre l'auteur, la professeure du rapport et la haute administration.

Y'avait la haute administration qui donnait des, des commentaires sur une ébauche du rapport. Y'avait plein d'affaires comme ça et ça, vous allez le voir dans la preuve.

Donc, donc suite à ça, très rapidement, c'est là sous l'effet de voir ces documents-là, que j'ai écrit le blogue du 11 février 2011, qui est ce blogue en question que monsieur

Dearden vous a montré, qui a le titre, qui pose la question, *Did Professor St. Lewis act as Allan Rock's house Negro?* Il faut savoir que le terme « *house Negro* » est un terme d'analyse politique bien connu et très courant dans les questions de discours

politiques et il faut savoir - et, et j'ai deux experts témoins qui vont témoigner à cet effet-là. Vous pouvez voir dans les médias très couramment, on traite le président Obama de ça. On traite Condoleezza Rice de ça, dépendant des circonstances. C'est dans les médias. C'est un terme courant pour les

figures publiques, qui se - qui, qui, qui ont

une certaine influence, des intellectuels publics aussi. Ils s'ouvrent - ils s'ouvrent à ce type de critique, qui est cette critique-là et je vais - et une, une de mes experts, la professeure, la professeure Mercier va expliquer en quoi, c'est, c'est quelqu'un qui a deux doctorats, qui est professeure à l'Université Queen's, qui a un doctorat en linguistique, qui a écrit un article. On discute l'origine des mots comme le mot nègre, etcétera, et qui explique l'impact que ces mots-là ont sur le psyché de la personne dans notre société. C'est une experte, sans aucun doute, et elle va expliquer que - elle va expliquer la logique pour expliquer que c'est absolument pas racisme à priorie pour une personne blanche de critiquer une personne noire en utilisant ce terme précis, qui a un sens précis et ça veut dire - ça veut dire une personne privilégiée d'un groupe racial, qui agit pour le groupe dominant de sorte à minimiser les efforts de ceux qui veulent se libérer, de ceux qui se plaignent, de ceux qui subissent du racisme, de sorte à minimiser ou de normaliser ça et ça, c'est le sens du terme « *house Negro* ». En français, y'a un terme semblable, roi nègre qui est utilisé au Québec, qui, qui a une historique, etcétera. Donc, j'avais, dans ce blogue, expliqué en

plus le sens de ce terme. J'ai intégré ici,

dans l'article blogue, ce vidéo que vous ne voyez pas ici à cause d'un problème technique, mais il y a un vidéo ici qui est un vidéo de Malcolm X, qui est celui - Malcolm X, c'est un des grands architectes des droits civils aux États-Unis et il est très connu au Canada. Il est très connu en Amérique du Nord. Malcolm X était un très grand personnage et il faisait cette, cette critique-là contre les collaborateurs noirs, qui étaient proches de l'administration des États-Unis. Il faisait cette critique-là d'eux. Ça veut dire précisément ça. Ça voulait dire autre chose pendant l'esclavage. Évidemment, c'était historiquement une autre période. Il faut adapter les concepts, mais c'est un terme actuel de nos jours qu'on utilise, qui est un vrai terme, qui est dans notre langage courant et qui veut dire précisément ce que ça veut dire par rapport à la politique raciale. Donc, à - donc, quand - après ça, y'a eu une période et en plus - oui, j'ai donc publié ce blogue que vous voyez là et j'ai immédiatement informé le [sic] professeur St. Lewis que j'avais publié ce blogue. J'ai envoyé un très court courriel à elle et au président Rock et j'ai dit, j'ai publié ce blogue à propos de vous, quelque chose comme ça. Je paraphrase, mais j'informe toujours - les gens que je

critique, c'est ma pratique de les informer

pour qu'ils puissent répondre, pour qu'ils puissent mettre des commentaires exactement là avec le même blogue à côté qu'on puisse - qu'on puisse le lire ou qu'ils puissent me dire : « Je veux répondre avec un article blogue moi-même sur votre même blogue. » Quoi qu'ils me disent, j'accommode ça, j'ai l'es informé. Si ils ont des critiques ou ils me montrent des erreurs dans les faits de quelque chose que j'ai dit, je les corrige. Par exemple, moi, j'étais convaincu que le [sic] professeur St. Lewis n'avait, n'avait pas la permanence, ce qu'on appelle en anglais *tenure* parce que elle était au niveau *assistant professor* et à mon sens, habituellement, dans la plupart des institutions au Canada et aux - en Amérique du Nord, quand on obtient la permanence, on est aussi promu aux grades *associate professor*. Donc, dans mon esprit, dans tous les exemples que je connaissais, j'avais jamais vu ça donc, j'ai fait cette mauvaise supposition-là. Aussitôt que la professeure St. Lewis m'a montré un document qui montrait qu'elle avait la permanence, je l'ai corrigé immédiatement sur mon blogue et j'ai fait une note sur le blogue que j'avais fait une erreur et je l'ai corrigé. Alors, c'est ça - c'est, c'est comme ça que j'opère, mais je protège mon droit de faire des critiques

sévères aussi. J'essaie de protéger mon

droit de faire des critiques sévères et donc, après - donc, le blogue a été publié. Alors, voici la chronologie. Le 11 février 2011, le bog [sic] - le blogue est publié et je n'entends rien pendant plus de trois mois. Rien. Trois mois. Et là, j'obtiens la notice dont monsieur Dearden parle et c'est là que je publie l'article du mois de mai 2011 où je dis, voici ce qui se passe et la preuve que je vais vous présenter, va montrer que j'ai essayé de négocier avec monsieur Dearden. J'ai essayé d'avoir une conversation. Quand il m'a envoyé la notice, je lui écris puis j'ai dit : « Il faut qu'on en parle. » Je, je, je, je voulais en parler. Il m'a remballé dans des termes très sévères et il m'a fait comprendre ce que j'ai compris que quoi que - quoi - y'en est pas question. Il faut que immédiatement vous faisiez telle et telle affaire et on va vous poursuivre. Donc, j'ai bloqué cette réponse-là en mai 2011 et là, ce qui s'est passé après ça, c'est que y'a eu la poursuite et quelques semaines après, y'a eu ce qu'on appelle les plaidoires écrits là, le *statement of claim* et là, c'était très sérieux et j'ai continué moi, à informer les lecteurs du blogue. J'ai continué à rapporter les faits de ce qui se passait dans la poursuite parce que j'estime que c'est

important de faire ça. C'est important de pas garder les choses secrets. C'est important que le public sache exactement qu'est-ce qui se passe quand il y a des conflits dans les institutions comme ça. C'est pour ça que je blogue et j'ai toujours eu ce - cette raison-là. C'est dans mon - c'est dans ma personnalité, si on veut. C'est dans mon désir de recherche de la justice. J'ai continué à décrire les étapes de cette affaire. J'ai continué à dire et à parler aux médias qui voulaient rapporter sur cette question-là. Monsieur Dearden va vous dire que le fait que je rapportais aux médias, ça montre de la malveillance de ma part. En anglais, on appelle ça *malice*. Je comprends mal comment c'est possible. Les médias sont indépendants. Les médias décident qu'est-ce qu'ils vont rapporter, comment ils vont le rapporter. J'ai jamais eu de contrôle sur les médias et j'ai - ensuite, l'action a, a, a - s'est poursuivi, un [*sic*] action très compliqué qui a été très difficile pour moi aussi, pour tout le monde, je pense. Par exemple, j'ai subi 16 heures d'interrogation en ce qu'on appelle les découvertes pour donner la preuve à l'autre parti. Seize heures. C'est - normalement, ce qui est prévu dans les règles, c'est sept heures. Donc, c'est pour montrer à quel point la cause était compliquée et dans ce

Opening statement by Mr. Rancourt

processus, je - puisque j'étais pas avocat,

5 j'avais du mal et j'ai perdu souvent des
motions. C'est-à-dire des, des mouvements
légaux où j'essaie de m'assurer d'avoir une
justice procédurale dans l'action et j'ai
souvent perdu et je dois payer les coûts de
l'autre côté quand je perds. Alors, à date,
il y a des grands coûts contre moi et je suis
sans ressources. Donc, déjà, y'a eu des
répercussions très sévères et monsieur
10 Dearden m'a écrit dans cette - dans cette
affaire et a dit : « Vous allez dire à votre
épouse de ne pas vendre sa maison parce que,
essentiellement, ça veut dire qu'on vient
chercher la maison. » Il, il a écrit
15 quelques jours avant Noël qu'on - pour me
dire : « Si vous lui dites pas, je vais lui
écrire personnellement et je vais lui dire
ça. » Monsieur Dearden va vous dire que, ah,
oui, mais vous - j'avais transféré une
20 partie, 60 pour cent de la valeur de la
maison à mon épouse pour éviter de payer les
frais. Ça faisait depuis...

INTERPRETER: I am the defendant in this
25 case. I'm representing myself. I am not a
lawyer but I can tell you that there are
serious omissions in Mr. Dearden's
presentation. I would like to start by
telling you that I do not know Professor St.
30 Lewis personally. I have seen her make a
public presentation several years ago.

Opening statement by Mr. Rancourt

That's the only time when I saw her in person. I have never had any contacts with her through - except her criticism on my blog. I have nothing personal against the professor as an individual or as a professor. My criticism is limited to the report that she prepared for the university. As us, yes, I did make a - make this critique of Professor St. Lewis and Allan Rock, the president. This was an opinion based on true facts and not unlawful to have severe, even insulting opinion on - these are based on true facts. The law does allow this type of criticism. Basically, what occurred was in 2008, the students had prepared a report, which stated that a systemic racism was in place against them at the University of Ottawa. It was a racism that dealt against them, which seemed to me, a true report, one that spoke true, a good report, one that say the truth. It was quite serious and quite worrisome. It was the first report of systemic racism at the University of Ottawa. The president of the university, Allan Rock, asked a law professor, a professor of black race to evaluate the report and her evaluation, from the professor, expressed that the student's report was faulty and did not allow to conclude even in evidence, meaning a proof of systemic racism. I saw that. I saw an important report prepared by students, addressing a real racism problem.

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I was in contact with the students. I was in contact with the author of that report and I saw that report that was being objected against the university to criticize. There was a need to respond immediately, a report that needed to respond to the student's report and during that period of time, that was the only answer. And I saw the result of this evaluation report. I saw the evaluation report of the professor, which to my eyes, was faulty and biased as I read it. In this entire matter, two things must be distinguished: racism and racial politics. It's not the same thing. Racism is a racism to which the students are subjected who have the unfortunate situation to submit it - to be submit to it. It's a 40,000 student institution. It's like a city. Things that occur are not always pleasant. The true racism is it's racism against them whereas the racial policy is the request by the president. It's the report of the professor and it is my public criticism on my blog of this professor's report. That is the context of racial politic and institutional politics. This blog, I've always created - written it in this style in a direct, provocative style and I have never been afraid of insulting administrators or people who carried out their duties but as I saw it, had serious flaws. I've always done this since I've

started my blog, which I began in 2007, before I was fired and I have written it since 2007 upon until 2009, when I was fired. And between 2007, 2009, I've had the opportunity to criticize Provo for - Provos for documents that they provided to students and I said so openly and I showed - I indicated links to these documents and I criticized the president and - for not correcting these errors and that is the nature of my blog. I've always blogged in this manner, when I was a professor and afterwards. I was defending, in this blog, the student report, by criticizing the university's response and by explaining, in my blog, the nature - the political nature and racial of this conflict. And I did so, as I said, in terms that I typically used. It was direct. It was provocative. It was disturbing, but it was according to the blog's principles. As a blog and you've been shown a poster of the blog, the very first paragraph explains the nature of the blog. It's the paragraph by two of the great - greatest thinkers of our era, Foucault and Chomsky, who in 1971, were addressing the institution and the institutional policies and indicates why we must criticize university - criticize them strongly to expose that even though they may have an appearance of justice, they actually do

oppression within society. So, there's this discourse between Chomsky and Foucault that justifies the mandate of my blog. So, generally speaking, what occurred and I will tell you right away that it's not true that I waited two years before coming forth with this critique. There's some parts of this that are lacking here. I criticize - I made my criticism immediately in a lengthy and detailed, on my blog and I'll address this in a few minutes. Right away, in 2008, so here is - here it is. The Student Appeal Centre, in 2008, prepared this report that showed the following: 71 percent of the 48 cases of fraud of complaints during the study period were against and created strong problems between the student that was accused of fraud and the administration. Seventy-one percent of these students were not white students. They were visible minorities. So, that was one of the statistics that showed up in the results. To interpret such numbers, such statistics, one must know statistics. One has to be able to say, is it possible that 34 of the 48 students in the sampling is significant? Does that mean anything? How is this computation done? How can we know that all probabilities indicate a real problem or all probably, there is no problem. It's a question of statistics. And Professor St. Lewis does not have that expertise and

was not qualified to make a - criticize like
make a criticism of this data - this data.
Me, as a physician, as a scientist, I
recognize these numbers. I made this
calculation and I'm - I'll demonstrate that I
make this - these numbers. It will be
submitted as part of my evidence. So, what
the university did from this report, rather
than establish an evaluation committee for
this problem, what the university did, as I
see it, to minimize the student's report
because it became a media crisis when the
student's report came out, there was a -
there were quite a few media articles on the
interest and that was quite a problem for the
corporation which is University of Ottawa.
So, that had to be countered. And what they
chose to do is to obtain a prompt report.
The professor's report was prepared quite
quickly and her - right away, and there was a
counter mediation process where it was
explained that the expert who did the
evaluation report said they found no problem
and again, this was stated in the media.
Evidence, the evidence that I will present,
submit will show that the professor who wrote
the report, on one side, was not qualified to
evaluate statistical - students' statistical
data and secondly, her report cannot be
reasonably expected to be independent because
in the first phase of the report, she states

that this is an independent report and U of O officers, such as Mr. Major, will testify, will - had stated that they were looking for an objective report, an independent report. The idea was to present a report, not one that was not just an internal report, that was the concept. But I can tell you that I will submit in evidence that it's not unreasonable to draw that conclusion. So, the chronological order of events is as such. My blog dated 2007. The report from the students centre comes out in 2008, in November, I believe, and it comes out - it's brought by the undergraduate student, the student, a graduate of the SFU, which has a study centre. They published this report. The director has a degree in law. She has the necessary competencies to hold her - that position. And then the report was - will be one of my witnesses. She is Madame Mireille Gervais. Afterwards, there was a professor's report in the media and in 2008, immediately after, in December 2008, I published, as a first blog post, on this matter. And this is what it is. It will be submitted as evidence. I apologize, I've marked it. And it is titled, "Rock Administration Prefers to Confuse 'Independent' Rather Than Address Systemic Racism." And in this article, which is longer than those, which followed, I analyze the flaws in the report, in the

professor's report. I make a detailed analysis and I question her independence and I do the same criticism, which I did later on in my blog. And there was no feedback from the professor regard this first blog, blog post and that had been detailed. Later, afterwards, later in 2011, the Student Appeal Centre made an access to information request and requested all documents that related to the preparation of those reports. There's a law, which enables the access to all university document. They relied on that law and made the request under this law. They obtained all documents and posted some of these documents on an Internet - on the Internet and prepared a report on their blog explaining that there was some evidence that the report was - that report was not necessarily independent. There was - I can't give you the title of the blog but you'll see the blog. That will be submitted as evidence. And there was this link to the documents in the access to information process. I, right away, went to verify those and as I saw in my - I saw it, that confirmed it was to me, my confirmation in evidence that there was, let's say, it was evidence of a lack of independence. There were communications between the author, the professor who wrote the report and the high management, upper administration, as they

prepared comments on the draft report - a report draft and many comments like that, which you will see in the evidence that will be submitted. As such, following that, very promptly, after seeing these reports, I wrote the 11th of February 2011 blog, which is this blog that Mr. Dearden showed, with a title, said, "Did Professor Jo [sic] act as Allan Rock's house negro?" One must know that the term house negro is a political analysis terminology, which is well known and often used in political discourse. You must - I have two expert witnesses who will testify to this. You can see in the media, quite often, that we - President Obama is so treated, Condoleezza Rice is so treated, depending on the circumstances. It's found in the media. It's a common figure for public figures, which had - which have a certain influence. Public intellectuals also. They open themselves to this type of criticism, which is particularly criticism. And I will - a word of my experience, professor - Professor Mercier will explain as she - and how - and she has two doctorates from Queen's University, a doctorate in linguistics and who has written - published an article where she discusses the origin of the word such as Negro and so on, and talks about the impact on the psychological affect on our city. She is doubtlessly an expert and she will explain

that and she will explain that the logic that will show that it's not racism for a white person to criticize a black person in using that precise term, which has a very specific term which means - and that means a person - a privileged person in a racial group, which acts to - for the dominant group in such a way as to minimize the efforts of those who want to liberate themselves, who complain, are subject to racism, to normalize, just the other guy's side and that is the substance of the term "house negro". In French, there is a term, a similar term, *un nègre*, literal translation to Negro, which is used in Québec and I had on this blog, explained the significance of this term, integrated into this blog item a video, which you can't see. It's a - because of a technical problem but there's a video - one may - which is one of Malcolm X who was - Malcolm X was one of the great architects of civil rights in the U.S. and he is well known in Canada, in North America. Malcolm X was a well-known personality who criticized the black collaborators who were close to the U.S. administration. That was his - the criticism he had made of his. He was quite severe in his criticism. He explained what the term chauvinism means in the modern context. Well, that was back in the '60 but he was the one that brought this term in - the modern

term, the context of modern institutions and as we consider this, well, this video will be submitted as evidence. We'll see Malcolm X explains the role of the person who engages in these conflict - institutional conflicts and he explains this very well, quite clearly, of the terminology, this term, which I use in my blog, which means exactly that. It meant something else during the periods of slavery, of course. Slave - that was another period. Concepts have to be updated but it's a common term that's being used today, which is in our common language nowadays, which means exactly with regards to racial policy. Therefore, when - after that, there was a period - yes, and I published the blog that you see there and I immediately advised Professor St. Lewis that I had published that blog. I sent her a very short email and to President Rock and I said, "I published this blog about you." I'm paraphrasing but I always advise individuals I criticize so that they can answer or reply. So, that they can comment right there, with the same blog, so that they can be read or that they can tell me, "I want to reply with a blog article on your own blog." Whatever they - I am asked, I accommodate. I advised them. If they had - if they have criticisms or they point out mistakes in the facts that I have put forward, I correct those. For example, I was

convinced that Professor St. Lewis had not - hadn't - wasn't a tenured professor because she was an assistant professor and in my mind, usually, in most institutions in Canada and North America, when one obtains tenure, you're also promoted to the rank of associate professor. So, in all the examples I knew, in my mind, I had never seen so I made that improper supposition. As soon as Professor St. Lewis provided a document indicating that she had tenure, I corrected it on my blog and I noted it on my blog and I corrected it on my blog. So, that is the way I would operate but I protect my right to make severe criticisms and exercise that right. So, the blog was published. Here's the chronology. The 11th of February 2011, the blog is published and I hear nothing for more than three months. Nothing. Three months. And then, I receive a notice of libel that Mr. Dearden spoke of and that's when I publish the May of 2011 article where I say, "Look, this is what's happening." And the evidence that I will proffer will show you that I tried to negotiate with Mr. Dearden. I tried to converse with him. When he sent me his notice, I said, "Let's - we need to talk about this." I wanted to talk about it. He sent me packing in various brutal terms and he made me understand - what I understood, that it was out of the question, that

immediately you need to do A and B and C or you - we're going to sue you. So, I blogged this reply in May 2011 and there, what happened was there was the lawsuit. A few weeks later, there was what is called the pleadings, the Statement of Claim. That was very serious. And I continued, for my part, to advise my readers, the readers of my blog. I continued to relay the facts of the suit because I thought it was important to do that, to not keep anything secret. It's important that the public know exactly what is transpiring when there are conflicts in institutions like that. That is why I blog. I've always had that motivation. It's in my ADM if you will, it's in my desire to seek justice, to continue to describe the steps of this case. I continued to talk and discuss with the media who wished to report the matter. Mr. Dearden will tell you that the fact that I discussed this with the media, that it demonstrated malice, in English. I understand - I don't understand how it - that can be. Media are important. They need to decide what they're gonna report, when they're gonna report it. I have no control over media. And then the matter proceeded, very complicated - complex matter, difficult for me personally, for everyone involved, I believe. For example, I was discovered for 16 hours to give evidence to the opposing

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party. Normally, what's provided for the rules is seven hours but it's to show you to what extent this was a complex matter. But in this process, given that I was not a lawyer, I had great difficulty and I've often lost motions, that is legal attempts to obtain remedies and I've often not been successful and when I'm not successful, I've been called to pay those costs. Up to date, many costs have been ordered against me and I am without resources. So, there have been repercussions on me. Mr. Dearden wrote back to me in this matter and told me, you are going to tell your wife that she is not to sell her home because essentially, we're coming to get the house, is what essentially he said. He wrote a few days before Christmas to tell me, if you do not tell her, I will write to her personally and I will tell her that. Mr. Dearden will tell you, oh, yes, but I had transferred a part, 60 percent of the value of the home to my wife to avoid....

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INT: Yes, but I had transferred a part, 60 percent of the value of the home to my wife to avoid....

LE TRIBUNAL : C'est pas vraiment pertinent quoi que ce soit ça que - cet aspect-là, maître - monsieur Rancourt. Okay?

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INTERPRETER: That's not really pertinent *monsieur* Rancourt, that part, *monsieur*

Rancourt.

DENIS RANCOURT : Est-ce qu'on fait la, la...

LE TRIBUNAL : Ah, la question d'exécution d'un jugement potentiel, si y'en a un ou y'en aura pas, c'est pas pertinent à la question pour le jury. Le jury est pas - donc...

INTERPRETER: Are we - the execution of - for potential judgment, it's whether there'll be one or not, it's not pertinent.

DENIS RANCOURT : J'aurais un argument légal, mais je vais le passer.

INTERPRETER: So, I would have a legal argument.

LE TRIBUNAL : Non, continuez.

INTERPRETER: Continue please, sir.

DENIS RANCOURT : Merci. Donc, je vais vous dire ce que je vais faire dans cette action, la façon que je vas mener ma défense parce que je veux que vous compreniez pourquoi on veut faire sortir les preuves qu'on veut faire sortir. Je vais être obligé de questionner la plaignante. Je vais être obligé de contre-examiner les témoins pour établir certains éléments de preuve dont j'ai besoin pour avoir une défense dans cette affaire. Alors, je veux vous expliquer que dans cette action, je vais avoir - je vais avancer trois défenses. On a le droit, comme ça, d'avancer des défenses en parallèle. La première défense que je vais avancer ou une, une défense que je vais avancer, c'est que la

loi en Ontario protège ceux qui communiquent parce que il faut donner la, la notice en dedans de six semaines alors que y'en a pas eu pendant trois mois. Donc, cette loi est très stricte. Elle est - elle est en place pour protéger les journaux, les radios, les télévisions, tous ceux qui communiquent comme ça avec les médias et elle dit si la notice est manquée même de un jour, y'en a pas d'action. Donc, ça oblige les personnes à nous dire tout de suite et ça nous donne la chance de répondre. Alors, ma première défense, si on veut, c'est que la loi est telle que la notice pour cet article-là a été complètement manquée et donc, l'action est barrée, n'est pas permis et c'est Monsieur le juge qui, en voyant les évidences qu'on va faire sortir, va décider si effectivement en loi, c'est barré ou pas. Si il décide que c'est barré, il va vous demander d'oublier tout ce que vous avez entendu à propos de ce blogue, toutes les évidences, tous les témoins. Tout ce qui a rapport à ce blogue ne sera pas dans votre décision. Donc, ça va être très important que - et, et cette limitation dont c'est très important dans cette action. Cette limitation dépend de quand est-ce que la témoin aurait pu raisonnablement savoir que y'avait ce blogue? Elle va - elle va donner des évidences pour dire quand elle a regardé le blogue, mais la

question légale est quand est-ce qu'elle aurait pu raisonnablement connaître le blogue? C'est un test objectif et pour montrer ça, je vais montrer que plusieurs personnes, à maintes reprises, ont communiqué avec elle pour lui parler de ce blogue et elle a - elle, elle dit ne jamais avoir - est allé voir le blogue. C'est peut-être vrai, mais la question objectif [sic] c'est qu'elle aurait pu raisonnablement le faire et c'est ça la décision légale, d'après la Cour d'appel. Donc, ça, ça va - donc, quand je vais poser des questions par rapport à quand elle a - quand je vais présenter les preuves de toutes les fois où on l'a informé que y'avait ce blogue, mais qu'elle est pas allée voir, c'est pour déterminer cette question-là. Vous voyez? C'est pour ça que je vais faire ça. C'est pour que vous compreniez la logique de la preuve qui va sortir, que je vous dis ça et ensuite, une deuxième défense, c'est la défense que monsieur Dearden a mentionné, qui s'appelle *fair comment*. Alors, cette défense-là, pour réussir, je dois montrer un certain nombre de choses, que le sujet est d'un intérêt public. Ça, normalement, c'est admis dans un cas comme celui-là, une grande institution. On parle de racisme. On parle des étudiants. C'est de l'argent public qui est en jeu. Ça, habituellement, y'a pas de problème.

Ensuite, que mon opinion que j'ai exprimé, est basée sur des faits réels et c'est pour ça que je dois aller chercher ces faits-là. Je vais être obligé de questionner plusieurs témoins en contre-examination pour leur dire : « Ce courriel, c'est bien vous qui l'avez envoyé? C'est un vrai courriel, n'est-ce pas? » Parce que j'ai besoin des courriels qui montrent les faits réels sur lesquels que, que je connaissais, sur lesquels je base mon opinion. J'ai besoin d'établir ça. Ensuite, la troisième condition, il faut que l'opinion soit reconnue comme étant une opinion, que c'est - ça devrait être reconnu. On voit que c'est une opinion. On voit que je suis pas en train de dire une vérité. On voit que c'est une opinion. Dans mon cas, l'opinion en question, qui est la plus pertinente, c'est - je, je - excusez-moi, c'est.... Mais là, je, je la trouve pas, mais je le paraphrase. C'est que les documents d'accès à l'information suggèrent que la professeure St. Lewis a agi comme - donc, c'est clair que c'est basé sur des faits réels, les documents et que ça suggère. Donc, c'est une opinion et aussi, le titre du blogue montre bien que c'est une opinion. Dans les - dans la loi, des opinions, c'est typiquement quelqu'un a - y'a, y'a, y'a des circonstances en fait et quelqu'un a fait quelque chose et on dit

qu'il est déshonorable ou on dit que il a eu un comportement honteux. Tout ça, c'est des opinions. C'est permis ça. Que ça soit une insulte, c'est pas pertinent. Que ça soit insultant ou perçu comme insultant, c'est pas pertinent. Cette défense-là de *fair comment*, elle est complète, si j'arrive à démontrer ces choses-là, que - ah, oui, y'a un quatrième élément. Est-ce que une personne quelconque pourrait avoir la même opinion? Et la personne peut être biaisée. Ça peut être n'importe qui. Est-ce que, à partir de ces faits qui sont prouvés, une personne quelconque, une personne pourrait honnêtement avoir cette opinion-là, même si elle est biaisée ou pas? Ça, c'est le quatrième élément de la défense *fair comment*. Si ces quatre-là sont satisfaits, c'est une défense. Même si vous, vous avez trouvé que c'est diffamatoire, c'est quand même une défense et donc - et, et, et la chose qui peut ensuite détruire cette défense-là, c'est la malveillance, *malice*. C'est pour ça que y va y avoir beaucoup de, de - d'emphase pour essayer de démontrer que j'ai été malveillant dans cette affaire. Donc, la malveillance peut défaire cette, cette, cette affaire, mais il faut que faire cette, cette, cette affaire, mais il faut que ça soit de la malveillance d'intention. C'est ça la malveillance. D'intention. Il faut, il faut

5 - et c'est la plaignante qui a le fardeau de la preuve pour prouver la malveillance, d'intention. Okay? Alors, pourquoi est-ce que cette, cette défense existe? C'est très important dans la société que y'a cette défense-là. L'auteur, très célèbre, Salman Rushdie, un gagnant de multiples prix internationaux en littérature - littérature a dit la chose suivante, il a dit...

10 INTERPRETER: So, what I'm going to do in this matter, I'm gonna tell you how I'm going to conduct my defence because I want you to understand why I - we want to bring out the evidence. I will have to question the
15 plaintiff and cross-examine the witnesses to establish elements of evidence that I have deemed for my defence. I will explain to you that in this matter, I will advance three defences. We have to advance - we have a
20 right to advance parallel defences. The first defence, or one of the ones that I'm going to advance, is called - that the law in Ontario protects those who communicate because you need to give notice within six
25 weeks, whereas there was none for three months. So, that law is very strict. It is in place. It's strict to protect newspapers, radio, televisions, all those who communicate in that manner with media, and if notice is
30 missed, even for a day, there is no action. So, that obligates individuals to tell us

immediately and the opportunity to reply.
So, my first defence is such that the law -
that the notice for that article was
completely missed and that the action is time
barred and Your Honour will - once he sees
the evidence that will come out, will decide
whether or not if it is time barred in law or
not. If he determines it is time barred, he
will ask you to forget everything what you
first heard about the blog. All the
evidence, all the witnesses, that will not
factor into your decision. So, it will be
quite important and that limitation, it's
very important in this action. It - the
limitation depends on the premise of when did
the plaintiff reasonably have knowledge. She
will give evidence as to when she looked at
the blog but the legal interpretation is when
should she have reasonably been able to know.
It's an objective test and to establish that,
I will show that several people, on a number
of occasions, communicated with her and spoke
about the blog. And she says or claims to
have never seen - gone to see the blog.
Maybe it's true but the objective test is
whether or not she could and should have, as
per the Court of Appeal. So, when I will ask
questions as to when - when I'm going to
present the evidence of each time where she
was advised that there was this blog and she
didn't go, it's to determine that question,

that defence. That's why I'm going to do that. It's for you to understand the logic of the evidence that's going to come out that you understand. The second defence I will advance is that Mr. Dearden mentioned it, fair comment. That defence, to succeed, I have to demonstrate a number of things that the subject is of a public interest. That, normally, would be admitted in this case. A large institution, the discussion is about racism, students. It's public money that's at play. Usually, that would not be an issue. Then, that the opinion that I expressed is based on fact, true facts. And that's why I have to go and get those facts. I will be obligated to question several witnesses in cross-examination to say, this email, you sent it, didn't you? It's a real email? Because I will need the emails that will establish the real facts on which I relied my opinion. And then the third condition is that the opinion be recognized as an opinion. That is, that it should be recognizable that it is an opinion. That I'm not just stating a truth, that I'm expressing an opinion. In my case, the opinion that is the most pertinent is.... I - excuse me, just a moment. Well, now I can't find it but I will paraphrase it. It's that the documents, the set of documents suggest that Professor St. Lewis acted like, so it's

clear, that it's based on real facts, the documents, and it suggests, so it's an opinion. And also the title of the blog also indicate that it's an opinion. In the law, opinions are such that someone - there are circumstances, someone did something and we say that that person is dishonourable or that they had a faulty behaviour. All of that, those are opinions. That's permitted. Whether it's insulting, it's not permanent. Whether it's perceived as such, it's not important. The fair comment defence is complete if I demonstrate - oh, yes, there's a fourth element. Would another individual could have that opinion? It could be anyone. They could be biased. But given the established facts, another individual, could he or she reasonably have that same opinion, whether they're biased or not? That is the fourth element of fair comment defence. If those four criteria are met, it's a successful defence. Even if you found it was defamatory, it's still a fair defence, an acceptable defence. And what can then destroy that defence? It's malice. So, that is why there will be a lot of emphasis to demonstrate malice on my part. So, malice can quash the fair comment defence but it has to be intentional malice. That's malice. There has to be intent and the plaintiff has the burden of evidence to demonstrate

intention and malice. So, why does this defence exist? It's very important in our society, this defence. The author, Salman Rushdie, very famous, winner of many literary awards, said the following...

DENIS RANCOURT: "What is freedom of expression? Without the freedom to offend, it ceases to exist."

DENIS RANCOURT : Ça, c'est Salman Rushdie. C'est la base même de notre société qu'on puisse faire des critiques, même si des gens trouvent ça insultant et même très insultant. Une cause en diffamation, c'est donc une question de société fondamentale parce que ça oppose la liberté d'expression avec quelqu'un qui, qui dit que c'est la réputation peut supprimer l'expression libre. La Cour suprême a eu des choses à dire sur cette valeur de société. Par exemple, la Cour suprême, en 2001, a dit...

INTERPRETER: That was written by Salman Rushdie. That's the basis of our society. That criticism can be made even if others think it's insulting or very insulting. A defamation case is therefore a fundamental case for society. It involves freedom of expression on the one hand, that reputation can suppress freedom of expression. The Supreme Court has had things to say about this societal value. For example, in 2001...

DENIS RANCOURT: "Among the most the

fundamental rights possessed by Canadians...

LE TRIBUNAL : Là, vous n'êtes plus...

DENIS RANCOURT: ...is freedom of expression."

LE TRIBUNAL : ...dans une présentation de votre preuve là. C'est plus une présentation de fin là. Je pense pas que citer la Cour suprême va aider à savoir où est-ce qu'on s'en va là. Je pense que, jusqu'à date, vous allez bien là, mais ne citez pas la Cour d'appel maintenant là. Vous pourrez - si ça vient à des questions, parce que oubliez pas que le droit, je vais le dire qu'est-ce que c'est au...

INTERPRETER: Now, you're no longer in a - an opening. You are more in a closing. I don't think that quoting the Supreme Court will help jurors to know where we're headed. So far, you've been doing okay, but it's not the time to quote the Court of Appeal now because don't forget, that I will also say what the state of the law is.

DENIS RANCOURT : C'est...

LE TRIBUNAL : ...jury plus tard.

INTERPRETER: It's for the jury for later.

DENIS RANCOURT : Je vous - j'avais l'intention de montrer que la Cour suprême avait parlé des, des opinions outrancières, que c'était protégé et des, des opinions qui peuvent être dérangeantes.

INTERPRETER: I intended to show that the

Supreme Court had spoken about outrageous opinions being protected and opinions that could be disturbing.

LE TRIBUNAL : C'est des arguments que vous pourrez peut-être faire à la fin là, mais pour le moment...

INTERPRETER: Those are arguments, sir, that you might be able to make at the end.

DENIS RANCOURT : D'accord.

INTERPRETER: All right.

DENIS RANCOURT : Donc, le manque d'indépendance dans le rapport, la preuve va démontrer que la personne qui a écrit le rapport en question, la professeure, était employée de l'université. La personne qui a écrit le rapport échangeait des courriels avec ceux qui lui demandaient d'écrire le rapport avant de soumettre son rapport. Recevait des suggestions et la preuve va montrer qu'elle suivait - peut-être pas la preuve va montrer qu'elle admet avoir suivi, mais les changements qui ont été suggérés, on peut les voir dans le texte final, un ou deux de ces changements-là. La preuve va montrer que monsieur Wong, qui travaillait avec l'université à l'époque, un de mes témoins, a envoyé à la plaignante sa critique à lui du rapport étudiant avant qu'elle écrive sa première ébauche et il avait été mis en contact avec la plaignante par Robert Major, le vice-recteur de l'université. Donc, on -

la, la preuve va démontrer ces choses-là et les choses, la plupart ou toutes des choses qui étaient dans la critique de monsieur Wong, du rapport étudiant, se sont trouvés sous une forme ou une autre dans le rapport, dans le rapport, dans la première ébauche du rapport. J'ai déjà mentionné - okay. Bon. Y'a une troisième défense que je vais utiliser et cette défense s'appelle un abus de processus. Un abus de processus, ça veut dire que l'action elle-même est tellement injuste dans le processus qu'on doit pas la permettre. On doit pas permettre l'action parce que l'action elle-même est trop injuste en soit par la nature de ce qui se passe et ça, ça, je vais faire cet argument-là et mon abus de processus, il est basé sur quatre éléments. Premièrement, il n'y a pas d'évidence d'un dommage réel. Je parle d'un dommage réel à la réputation et donc, qu'est-ce que je veux dire par ça, un - là, je parle d'un dommage réel. On va m'accuser de malveillance parce que je prétends que y'a pas de dommages. On, on va essayer de pas faire la distinction entre un dommage qui est présumé dans la loi de la diffamation et un dommage réel qui peut se prouver.

INTERPRETER: Thus, the lack of independence in this report as the evidence will show, the individual who wrote the report, the professor in question, was an employee of the

university and the person who wrote the report exchanged emails with those who asked her to write this report. Before submitting the report, she received suggestions and the evidence will show that she followed that - the evidence may not show that she admitted to these changes but the changes that were proposed appear in the final text, one or two of these changes. Evidence will show that Mr. Wong, who travelled with the university at the time, one of my witnesses, sent to the plaintiffs her - his criticism of the student report before she wrote her first draft and he was directed to the plaintiff by Robert Major, the prof at the university and evidence will show those things. And seeing this, most or all of the items, which were in Mr. Wong's student criticism, found themselves in the first draft of the report. I've already said, okay, there is a third defence on which I will rely and that is abuse of process. This abuse of process means that the action itself is so unjust in the process that it must not be allowed. It - the action must not be allowed because it's too unjust just by its very nature in the context of what's happening and I will submit that argument as my abuse of process. The claim is based on four elements. First, there is no evidence of any real damage to reputation and what I mean here and I'm

5 talking about a natural real damage. I'll be
accused of malice because there is no
demonstration. There is no - of an assumed
damage versus one that's disposed.

LE TRIBUNAL : On va prendre une pause. Je
vais demander au jury de se retirer, s'il
vous plaît.

INTERPRETER: I will take a pause here. I'll
ask the jury to be excused.

...JURY RETIRES (12:03 p.m.)

DENIS RANCOURT : Oui, mais c'est...

LE TRIBUNAL : Pouvez-vous m'expliquer
qu'est-ce que vous essayez de faire là? Vous
parlez d'une défense d'abus de procédure.

15 INTERPRETER: Can you explain, tell me what
you're trying to do here? At this time,
you're talking of a defence of abuse of
process.

DENIS RANCOURT : Oui. C'est, c'est - je
l'ai plaidé et je vais.... C'est, c'est la
défense...

INTERPRETER: Yes. I do pled [sic] that.
And it would...

25 LE TRIBUNAL : Mais expliquez moi ça un peu
avant qu'on aille avec ça. Vous dites qu'il
y a - c'est quoi ça? Expliquez - dites
moi...

DENIS RANCOURT : C'est...

LE TRIBUNAL : ...le à moi avant là.

30 INTERPRETER: Well, explain to me, before we
head down this way. You're telling me what

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that is. Tell me, before we go down this

road.

DENIS RANCOURT : Okay, oui. C'est la
défense *Jameel* dont on a parlé dans la motion
qu'on a eue plus tôt et c'est la, le, la, la
Cour d'appel de l'Angleterre et de Wales, qui
a décidé, trois juges de la Cour d'appel qui
ont décidé que dans un cas où y'avait pas de
- où y'avait pas de chance ou y'avait pas de
dommages réels, *actual damage* à la
réputation, que dans un cas comme ça, le
plaignant pouvait faire appel à une défense
de abus de processus et donc, je me base là-
dessus...

INTERPRETER: It's the *Jameel* defence, which
we discussed earlier. It is the Court of
Appeal in England and Wales, three judges who
decided that in a case where there is no
chance or no actual damage to the reputation,
then in such a case, the plaintiff can call
on an abuse of process defence and that is
my....

LE TRIBUNAL : Vous voulez dire le défendeur?

INTERPRETER: You mean the defendant?

DENIS RANCOURT : Le défendeur, oui, peut
faire appel à une, une - comme on a déjà
parlé, comme j'ai déjà expliqué dans, dans...

INTERPRETER: Yes. And in this case, I can -
as I was told, as I have explained...

LE TRIBUNAL : Oui. Y'a pas - moi, je suis
d'avis qu'il n'y a pas de défense de ce type

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là en droit au Canada ou en Ontario. Donc...

INTERPRETER: I believe that there's no such defence of this type in Canada or in Ontario.

DENIS RANCOURT : Avec tout respect, Monsieur le juge, je l'ai plaidé.

INTERPRETER: With all due respect, Your Honour, this is what I pleaded.

LE TRIBUNAL : Oui, oui. Vous...

DENIS RANCOURT : C'est dans, c'est dans...

LE TRIBUNAL : ...pouvez plaider. Vous...

DENIS RANCOURT : ...c'est dans mon - c'est dans mon *Statement of Defence* et un abus de processus...

INTERPRETER: It is in my Statement of Defence.

LE TRIBUNAL : Oui, mais ça, c'est votre...

DENIS RANCOURT : ...un abus de processus, on peut toujours faire appel à un abus de processus, que ça soit une cause en diffamation ou autre chose. Dans ce cas-ci, le contexte précis était celui de la diffamation. C'est-à-dire, c'était un cas de diffamation où...

INTERPRETER: It is an abuse of process. We can always call - refer to an abuse of process whether it's a slander case or in this case, precise context is one of slander. It's a libel.

LE TRIBUNAL : Non, mais ça - j'ai déjà décidé là-dessus.

INTERPRETER: It's a - but I've already

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decided on that.

DENIS RANCOURT : Non, Monsieur le juge, vous avez éliminé les paragraphes et vous les avez nommés et vous avez laissé toute l'autre gamme de paragraphes, qui parlaient de cette défense-là et c'est ça que j'ai plaidé et c'est cette défense-là que je vais utiliser.

INTERPRETER: No, Your Honour, you eliminated the paragraphs and you named them and you have left the remaining paragraph, which referred to this defence and this is what I pled and this is what [inaudible].

MR. DEARDEN: Oh God.

DENIS RANCOURT : Vous avez, vous avez éliminé la défense *by proxy*.

INTERPRETER: You have eliminated the defence by proxy.

LE TRIBUNAL : Oui, mais...

DENIS RANCOURT : La défense *by proxy* et qui se rattache à la Charte. Vous avez laissé la défense *Jameel*. Votre décision était très claire. Vous avez énuméré les paragraphes en question.

INTERPRETER: The - which refers to the *Charter*. You did not address that touchy *Jameel* decision. You have enumerated the paragraphs in - at the heart of the matter.

LE TRIBUNAL : Okay, bien...

MR. DEARDEN: Unbelievable. Your Honour...

THE COURT: Just hold on.

MR. DEARDEN: ...as I recall he referred to paragraphs 61 to 67 in the briefs, which is

what he's talking about.

DENIS RANCOURT : Non, c'est pas vrai. C'est pas de ça que je parle.

INTERPRETER: That's not true. No, that's not true.

LE TRIBUNAL : Mais dites-moi de quel paragraphe, pour commencer, mais comme je vous dit, c'est que vous commencez à parler de quelque chose qui, selon moi là, premier aborde ne constitue pas en droit une défense. C'est pour ça que je vous ai arrêté, mais si - à quel paragraphe vous référez?

INTERPRETER: Tell me which paragraph this *Charter's* rights (indiscernible). This - you're beginning to talk about something, which is far that - at first, look does not - is not a legal defence. That's why I interrupted you. But at what time are you referring?

DENIS RANCOURT : Donc, je l'ai plaidé et je vous le - je vous...

INTERPRETER: That's what I pled.

LE TRIBUNAL : Non, non, mais le fait que vous l'avez plaidé, ce n'est pas nécessairement une défense en droit. Comprenez-vous? Ce sont deux choses différentes.

INTERPRETER: No, the fact that you have pled that is not a defence in law. Do you understand? That's two different things.

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DENIS RANCOURT : Oui, mais l'abus...

LE TRIBUNAL : Moi, je décide qu'est-ce qui est une défense en droit. Vous, vous plaidez et puis avant...

INTERPRETER: Yes, but the Court will decide what is a defence in law. And you plead [sic]....

DENIS RANCOURT : Mais mon...

LE TRIBUNAL : ...après ça, moi je décide.

DENIS RANCOURT : ...mon, mon argument, Monsieur le juge, c'est...

INTERPRETER: My argument, Your Honour....

LE TRIBUNAL : C'est où? Quel paragraphe?

INTERPRETER: Which paragraph?

DENIS RANCOURT : Oui, alors, c'est - donnez moi une seconde. Donc, c'est les paragraphes 68 à 72 et surtout le paragraphe 71, où là, ça devient clair où je utilise le terme « abus de processus » et je dis...

INTERPRETER: It's - give me a second, please. It is paragraphs 68 to 72 and especially paragraph 71 where it's very clear that I'm using the term abuse of process.

DENIS RANCOURT: The plaintiff's damages, as claimed, are against an unemployed individual and would put the defendant out of house and home.

DENIS RANCOURT : C'est pour ça que je parlais de ma maison, Monsieur le juge, parce que je l'ai plaidé et ensuite...

INTERPRETER: That is why I was talking about

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my home, Your Honour. That's why I pled and afterwards.

DENIS RANCOURT: ...in a matter where there is no claimed actual damage to the plaintiff.

DENIS RANCOURT : Et je dis...

INTERPRETER: And I'm saying...

DENIS RANCOURT: ...such asymmetry in attempted expect - extraction in damage is frivolous fixation and an abuse of process and unrecognized in law.

MR. DEARDEN: Where?

DENIS RANCOURT : Donc...

LE TRIBUNAL : Okay. Paragraphe - bien, je peux vous dire tout de suite...

DENIS RANCOURT : 71.

LE TRIBUNAL : ...je peux vous dire tout de suite là que, oui, vos paragraphes 68, 69, 70, c'est votre argument que y'a pas de dommages. Vous avez le droit de dire que y'a pas de dommages...

DENIS RANCOURT : Oui.

LE TRIBUNAL : ...en droit, okay? Mais 71, 72, je l'ai dit quand que - tantôt là, ce n'est - vous pouvez pas déposer de preuve à l'appui de ça. C'est - n'a aucune pertinence que vous allez perdre votre maison ou quoi que ce soit.

INTERPRETER: I could tell you right away, yes, your paragraph 68, 69 and 70, saying that there's no damage, you can say that there's no damage in law but 71, 72, I've

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told you, you cannot submit evidence to sustain - to support that. That is irrelevant whether you will lose your home or not.

DENIS RANCOURT : Avec, avec tout respect, Monsieur le juge, je vais argumenter que cette, cette protection d'abus de processus, elle est dans le *common law* en Angleterre et je veux l'utiliser ici.

LE TRIBUNAL : Okay.

DENIS RANCOURT : C'est ça que j'ai plaidé.

INTERPRETER: With all due respect, Your Honour, I will argue that this protection from abuse of process existed in common law in Britain and I wanted to use it here. That is my pleading, my representation.

LE TRIBUNAL : Bien, à ce moment-là, je serai - je serais - je ferais erreur en droit, mais je vous dit ce que je décide maintenant, c'est que vous ne pouvez pas faire...

INTERPRETER: At that time, I would be doing - making an error in law but this is what I'm telling you now, you cannot...

DENIS RANCOURT : Je peux même pas essayer de le plaider alors que, alors que je l'ai plaidé clairement, que y'a une - la Cour d'appel de l'Angleterre qui dit que c'est légitime de plaider abus de processus dans exactement ces circonstances-là, dans une cause en diffamation et je l'ai plaidé et vous avez déjà décidé que vous, vous alliez couper des paragraphes, une défense, mais

vous avez pas touché à celle-là alors que j'ai fait les arguments devant vous par rapport à ça, en détail, et j'ai parlé de *Jameel* et j'ai parlé de tout ça. Vous avez entendu tout ça et vous l'avez pas coupé et maintenant, vous me dites quoi? Là, je comprends plus du tout.

INTERPRETER: I can't even try to plead that where - whereas I pled that earlier, that the Court of Appeal in England said this is illegal to plead this abuse of process in exact identical process in a libel suit and I pleaded and you have already decided that you have deleted this paragraph with - for my defence and I have not touched that. When I presented these before you, in detail, and I thought *Jameel* and I thought all that, you heard all that and you have - did not withdraw this or - and you're saying what? I don't understand.

LE TRIBUNAL : Bien, je vous l'ai dit là, ça fait que...

INTERPRETER: I've told you...

DENIS RANCOURT : Oui. C'est-à-dire...

THE COURT: Do you want to say something, Mr...

MR. DEARDEN: Yes, Your Honour. I find what has just happened extremely troubling. You recall, Your Honour, that when you gave your decision on the litigation by proxy, contrary to the *Charter* defence, you did reference

5 paragraph 61 to 67 but the factual
underpinnings [sic] during that argument that
you rejected was the asymmetry and the *Jameel*
case. He argued that and you rejected it.
So, the finding has been made. For this
defendant to then say, okay, but in paragraph
10 71, you never ruled on that, is just so
unbelievably offensive that he would try to
do this and put abuse of process into the
jury's mind, which he's done, which I object
to, when you've ruled there is no such abuse
of process and don't put evidence in on it.
He made these arguments in paragraph 61 to
15 67. They're no different because he sticks
to - he has it mentioned in 71 of his
Statement of Defence. You've made those
findings and nobody is saying to him that he
can't argue Professor St. Lewis didn't suffer
any damages.

20 DENIS RANCOURT: No.

MR. DEARDEN: It is, it is...

MR. DEARDEN: Excuse me, I'm not finished.

THE COURT: Hold on.

25 MR. DEARDEN: It is prejudicial to this jury
to have been told, in an opening, that
there's an abuse of process going on here,
that is part of his defence and there's an
asymmetry in all of that. It's been ruled on
in the context of paragraph 61 to 67. And I
30 have other submissions, by the way, on what
this is supposed to be an opening? Yeah,

there's the instructions that I'm gonna want...

THE COURT: Well, we can hear...

MR. DEARDEN: ...Your Honour....

THE COURT: ...both of you on this but *monsieur* Rancourt...

DENIS RANCOURT : Avec tout respect...

LE TRIBUNAL : Monsieur Rancourt, c'est que vous êtes - vous pouvez ne pas aimer ma décision. Ma décision était claire lorsque je l'ai rejetée. J'ai rejeté toute cette question de abus de procédure, basé sur le déséquilibre, l'imbalance puis j'ai aussi mentionné que vous - que de tout simplement dire y'a pas de dommages ici, ça - c'est une question, oui, le jury doit décider si y'a des dommages ou pas, mais c'est - toute cette question de *Jameel* était sous-entendue dans ma décision. Il n'y a pas en droit, en Ontario, une défense telle que vous la proposez. C'est ce que je décide.

DENIS RANCOURT : Mm-hmm.

LE TRIBUNAL : Je me trompe peut-être, mais c'est ce que je décide et vous devez nécessairement, comme toute partie, suivre les directives de la Cour en ce qui a trait au droit.

INTERPRETER: You may not like my decision but my decision was clear. When I rejected this, I rejected the entire matter with

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regards to abuse of process based on
(inaudible) the equal balance and you're
saying, and I also stated that just to say
that there's no damage here, it's a question,
yes, that is a question the jury must decide
whether there is damage or not, but this
question of *Jameel* is that was underscored -
understood in my decision. There is no
(inaudible) law in Ontario such a defence as
you are submitting. That is what I decide.
I may be wrong but that is what I decide and
you must (inaudible) any party follow the
Court's decision with regards to law.

DENIS RANCOURT : D'accord. J'aimerais vous
expliquer, Monsieur le juge, que la seule
raison que j'argumente qu'il n'y a pas de
dommages réels, c'est parce que c'est - ça
fait partie de cette défense qui a été
acceptée dans le *common law*. Il faut que ça
soit des dommages réels, c'est-à-dire
prouvables, *actual damage*. C'est la seule
raison que j'ai parlé de dommages et ça doit
être des dommages à la réputation, pas à
autre chose, à la réputation. Ça, c'est la
nature de la défense en question. C'est pour
ça que je - j'étais en train d'argumenter ça.
C'est pas mon intention d'argumenter que y'a
pas de dommages si je n'ai pas une défense
qui se rattache à cet argument-là. C'est,
c'est - ça serait, ça serait pas raisonnable.
Toute mon - ma pensée et toute mon - ce que

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j'ai planifié comme argument était basé sur dommages réels à la réputation, pas aux émotions, à la réputation. C'est ça que j'essayais de dire. J'aimerais que la Cour distingue ces choses-là et ce sont ces choses-là qui sont dans la défense de *Jameel* que je veux faire parce que c'est dans le *common law* et je demande de le faire.

INTERPRETER: I would like to explain, Your Honour, that the only reason why I'm arguing that there's no real damage is that, that this part of the defence, which was accepted in common law. The, the, the damages have to be actual damage can be proven and that's the only reason why I told - and (inaudible) damage to reputation. Not anything else. To damage, that is the nature of the defence in question. That is why I was arguing this. It is not my argue [*sic*] say that there's no damage if I don't have a defence which is not linked to this argument. And that would be unreasonable. All my thought process, all that I've planned is argument, is based on the actual damage to reputation, not to emotions, but to reputation. That is what I was trying to present and I would like the court to make a distinction between these things and that is - these are the things that are matters in the *Jameel* defence and because it's in common law, that's what I ask to be unable to do.

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LE TRIBUNAL : Bien, je vous ai expliqué que non. Okay?

INTERPRETER: And I just explained to you that you can't.

DENIS RANCOURT : D'accord. Mais je, je veux quand même que vous sachiez que c'est pas - je, je n'ai jamais argumenté que y'avait pas de dommages, sens général, et que c'est dit comme ça dans mon *Statement of Defence*, mais dans le contexte ici et dans le contexte que il n'avait que parlé de dommages à la réputation dans leur *Statement of Claim*. Donc, voilà. Merci.

INTERPRETER: Very well. But I want you to know that I have not - I've never argued that there was no damage in a broad sense. It is so stated in my *Statement of Defence* but in this context, in the context that was only talked about in damage, damage of reputation in the *Statement of Claim*. So, that's it.

LE TRIBUNAL : Donc, vous avez ma décision là avec - agissez en conséquence.

INTERPRETER: Well, you have my decision, so act accordingly.

LE TRIBUNAL : On peut rappeler le jury pour conclure ça.

INTERPRETER: The jury can be brought back in to resume.

CLERK REGISTRAR: All rise.

...JURY ENTERS (12:15 p.m.)

CLERK REGISTRAR: All members of the jury are

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present, Your Honour. You may be seated.

LE TRIBUNAL : D'accord. Monsieur Rancourt?

INTERPRETER: Mr. Rancourt?

DENIS RANCOURT : Donc, pour corriger un peu
le, le tir, si on veut, je ne vais pas
argumenter que l'action est un abus de
processus et donc, je n'amènerai pas
d'élément de preuve qui se rattache à cette
défense-là. Vous pouvez éliminer cette,
cette chose de votre pensée. La, la
diffamation - je veux juste dire quelques
mots et ensuite présenter mes - les témoins
dont - qui, qui va y avoir. Une cause en
diffamation, c'est à propos d'un dommage à la
réputation. On cherche à être récompensé
pour un dommage à notre réputation. C'est ça
l'essence d'une cause en diffamation. Dans
ce cas, il n'y a pas d'évidence de dommages
réels. Je parle pas de dommages de - du
dommage normal qu'on présuppose dans la loi
de la diffamation, mais je parle d'un dommage
réel qui pourrait se prouver. Un dommage
réel, ça serait, par exemple, y'a pas eu de
perte d'emploi. Y'a pas eu moins d'étudiants
qui sont enregistrés dans des cours ou qui
sont supervisés par la plaignante. Y'a pas
eu moins d'invitation à parler sur des
campus. Y'a pas eu moins de demandes de
faire des rapports ou des études. On m'a
montré aucune évidence de ce type-là, aucune
preuve de ce type-là, qu'on va présenter.

Y'a pas eu une perte du status de professionnel, une démotion ou quelque chose comme ça où on a perdu notre position sur un comité quelconque ou quelque comme ça. Y'a pas eu ça. Y'a pas eu d'évidence comme quoi c'est plus difficile pour la plaignante de publier ses travaux, ses travaux de recherche. Y'a pas eu d'évidence comme quoi c'est difficile pour la plaignante d'obtenir de la - de l'argent pour sa recherche ou d'engager un chercheur assistant. Aucune évidence de ce type-là. Que y'a moins de promotion au travail. Aucune évidence de ce type-là. Que y'a eu des incidents où quelqu'un a évité la plaignante pour une raison ou pour autre. On ne m'a fait part d'aucune preuve de ce type-là. Donc, il n'y a pas, dans cette cause, d'évidence d'un dommage réel, réel à la réputation, juste le dommage à la réputation qui est présupposé par la loi en diffamation. Évidemment, on va m'accuser de malveillance, d'avoir même argumenté ça, de l'avoir même signalé. On va m'accuser de malveillance par rapport à ça. Dans une affaire comme celle-ci, quand on regarde le blogue, soit on est un collègue de la plaignante. On, on voit ça sur le Google search puis on dit, ah, un blogueur qui met une opinion. On, on donne pas d'importance à ça. Si on va lire le blogue et on l'étudie, on va développer notre opinion surtout les

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collègues de la plaignante, qui sont des étudiants en droit et des professeurs en droit et des professeurs à l'université. Ils vont se faire leurs propres opinions. C'est pas parce que j'ai émis une opinion que eux vont accepter la même opinion. Ça marche pas de même, surtout pas dans le monde académique. Donc, soit on va dire : « Ouf, c'est juste un blogue qui émet une opinion puis j'ai pas le temps d'aller regarder ça. Ça n'a pas d'impact. », ou on va l'étudier et on va décider pour soi-même et à ce moment-là, la décision qu'on va prendre, elle va être notre décision, basée sur les faits que nous on va aller voir. On va aller voir les documents d'accès à l'information. On va voir ce qu'on veut et on va décider. On va peut-être parler à quelqu'un d'autre. C'est comme ça que ça marche. C'est pas juste automatique parce que y'a un blogue tout d'un coup, tout le monde a une opinion négative à notre, à notre sujet. Maintenant, dans, dans ma preuve, je vais présenter les témoins suivants : il va y avoir deux experts. La première expert, c'est Cynthia McKinney, qui a été membre du Congrès des États-Unis pendant douze ans, qui a été la première femme politicienne élue au Congrès dans l'état de Georgie aux États-Unis et qui a passé sa vie à se battre contre le racisme institutionnel et contre - et dans le milieu

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de la politique raciale et elle va venir dire qu'est-ce que ça veut dire ce terme critique, l'analyse politique qui est le terme « house negro » et qu'est-ce que ça veut dire dans la communauté noire en Amérique du Nord et à quel point c'est la même chose, qu'on soit en Amérique - aux Etats-Unis, au Canada, en Afrique du Sud, n'importe où, ça veut dire la même chose, toujours. Elle va dire ça et elle va dire - en ce moment, elle est en train de, de - en plus d'avoir été politicienne, elle fait un doctorat en ce moment où elle écrit sa thèse justement sur ces questions raciales là, sur les batailles de justice dans les questions raciales et elle va dire, dans le monde moderne, dans les institutions, quand il y a des conflits... INTERPRETER: Thus, to correct, to realign my points, I will not argue that this is an abuse of process matter and I will not submit evidence that will rest on this manner of defence. You can delete this part from your mind. The libel. As a few words and I will present the witnesses. A libel matter is one with a - which relates to the damage to reputation. One seeks [sic] - seeks corrective measures, damages to damage to one's reputation. That's a substance of a libel matter. In this case, there is no evidence to any damage, real actual. I'm not talking about usual damage that we presuppose in damage to reputation but I'm talking about

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real damage. For example, there was no loss of employment. There were - there was not fewer students who registered to courses that are given or supervised by the plaintiff. There has not been few words to - fewer invitation to address presentation on campus. There are no fewer request to prepare studies. I've been shown no such evidence of that type and there's not been any loss of professional status, any demotion or things of the like of the kind. One lost one's position on a committee or anything of that matter. There was no evidence that it was more difficult for the plaintiff to publish her papers, research papers. There was no evidence if - that it was more difficult for the plaintiff to obtain funds for her research or to hire a research assistant; that there was fewer opportunities for promotion at work; that there was - that there were incidents where someone avoided the plaintiff for one reason or another. I was not told of any such evidence. So, in this matter, there is no evidence of actual real damage to reputation. Just the - damage to reputation, which is sort of understated in the libel law. I will be accused of malice and having claimed that, even have to - brought it to your attention to that matter. In the matter of this case, when we - you could look at the blog. We are either a

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colleague of the plaintiff, as can be seen on Google search, we see a blogger expressing an opinion and we don't have to attach too much interpretation and importance to that. If we go and read and study the blog, then we'll form an opinion, especially the colleagues' column, which are law students and professors, law and university. They all form their own opinion. It's not because I have expressed an opinion that that opinion will be assumed, will be accepted. That's not how it work [sic] especially in the academic world. We'll say, well, there's a blog, which express an opinion. I have no time for that. It has no importance or it will be looked at and one's make my own - their own decision and at that time, that decision will be an individual decision based on the fact that we go and see - to go see documents, obtain another A tip. We'll see what we want when we talk to someone else. That's how it work [sic]. It's not an automatic - the reaction that the - everyone has a negative impression that follows from that. In the evidence, I will present - I will bring in the following witnesses. There will be two experts. The first person will be Cynthia McKinney, who is a member of the U.S. Congress for 12 years. She was the first woman politician elected to Congress in the State of Georgia, in the U.S.A., and she

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spent her life - a lifetime fighting against institutional racism in the area of racial politics. She will come to tell you what this - the meaning of this term, house negro, and what does that mean in the black community in North America, and it's the same thing whether we're in Canada, U.S.A., South Africa. It always means the same thing. That's what she'll tell you. And this time, she is at that time, besides being a politician, she's doing a doctorate, her thesis being on these racial issues, the fight for justice in judicial matters - in the racial matters. And she'll tell you that in the modern world, in institutions.

MR. DEARDEN: Your Honour...

DENIS RANCOURT : ...qu'est-ce que...

MR. DEARDEN: ...I'm sorry. Your Honour, can the jury be excused?

THE COURT: Well...

LE TRIBUNAL : Oui, on va vous demander de quitter une minute, s'il vous plaît, messieurs, dames?

INTERPRETER: I'll ask the jury to exclude itself for now.

...JURY RETIRES (12:21 p.m.)

CLERK REGISTRAR: You may be seated.

MR. DEARDEN: Your Honour, he was about to tell the jury the opinion of the expert that hasn't...

DENIS RANCOURT : Faux.

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MR. DEARDEN: ... been qualified yet.

DENIS RANCOURT : Faux.

MR. DEARDEN: Your Honour, could you ask
Mr...

INTERPRETER: That's false. That's false.

LE TRIBUNAL : Laissez le donc finir, s'il
vous plaît, monsieur Rancourt.

INTERPRETER: Please allow him to finish, Mr.
Rancourt.

MR. DEARDEN: He shouldn't have even
mentioned McKinney. She hasn't been
qualified. We are going to challenge her
qualifications and independence big time in
this. He's tell - he's told the jury that
she is going to give them the meaning of
house negro in North America. He's told the
jury - he's giving evidence, Your Honour.
He's giving evidence that the term is the
same in North America, knowing that Camille
Nelson, my expert, is saying or giving -
expert opinion is about what does that term
mean to black Canadians. And Mr. Rancourt
has given this jury evidence that the term
means the same thing in North America, coming
- is what Cynthia McKinney is gonna say and
just even mentioning what it means, Your
Honour, this is for the jury to decide, not
for McKinney, not for Mr. Rancourt, and he's
just told the jury. It's prejudicial. They
have to be instructed to ignore this. And he
should stop because - he should stop in....

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DENIS RANCOURT : Est-ce que vous voulez m'entendre sur cette question?

INTERPRETER: Do you have any comments on this matter?

LE TRIBUNAL : Oui.

INTERPRETER: Yes.

DENIS RANCOURT : J'ai dit qu'elle est - allait être la preuve. J'ai dit ce qu'allait dire mon expert.

INTERPRETER: I said what will be the evidence, I told - I said what my expert will say.

LE TRIBUNAL : Oui, mais de quoi elle est pas qualifiée?

INTERPRETER: But what if she's not qualified?

DENIS RANCOURT : Je n'ai pas - je suis pas au courant de règles qu'on doit présupposer limiter le, le, le discours d'ouverture sur la possibilité qu'un expert va être disqualifié. J'ai jamais entendu d'une chose...

INTERPRETER: I'm not aware of any regulation that must limit the opening statements on the possibility whether an expert will be disqualified or not. I never said that.

LE TRIBUNAL : Mais il faut pas relater de la preuve à un jury en ouverture, qui que ce soit, qui serait de la preuve qui peut-être serait déclarée inadmissible.

INTERPRETER: You must not relate evidence to

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a jury on the opening statements, which may be evidence, it may be declared admissible.

DENIS RANCOURT : Je ne connais pas cette règle-là.

INTERPRETER: I'm not aware of this rule.

LE TRIBUNAL : Oui, c'est la règle de base. Comme, par exemple, la Couronne, dans un procès criminel qui veut introduire une déclaration de l'accusé, ne peut pas parler de la déclaration de l'accusé avant que le juge la déclare admissible, c'est un exemple, mais y'en a - n'importe quelle preuve qui doit être assujettie à la - au fil de la décision du tribunal à savoir si cette - si le jury va l'entendre cette preuve-là...

INTERPRETER: Well, it's a basic rule, for example, if a Crown wants to bring something about a statement of the accused, it cannot be submitted before the judge describes it as admissible. Any evidence, which must be submitted, which will - must be subject to approval of a decision, as to know whether that the jury will hear it or not...

DENIS RANCOURT : Oui.

LE TRIBUNAL : ...mais de le dire dans - initialement, ça défait tout le but que - l'exercise.

INTERPRETER: ...to state it originally, this tears apart the whole process.

DENIS RANCOURT : J'étais pas...

LE TRIBUNAL : Ça fait...

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DENIS RANCOURT : ...j'étais pas au courant de, de ça.

INTERPRETER: I was not aware.

LE TRIBUNAL : Bon, d'accord. Bien, c'est ça qui est la loi. Bon.

INTERPRETER: That is the law.

DENIS RANCOURT : Merci.

LE TRIBUNAL : Allons-y.

INTERPRETER: Let's go.

DENIS RANCOURT : Est-ce que je vais expliquer ce...

INTERPRETER: Shall I explain that?

LE TRIBUNAL : Non, non, je vais l'expliquer moi-même là. Je vais leur dire qu'ils peuvent pas prendre en considération, c'est très - bon, de toute façon, je vais leur donner un mis en garde, mais c'est plus dangeureux d'en dire plus que moins là.

INTERPRETER: No, no, I will explain the issue myself. I will tell them not to take into consideration that it was.... In any event, I will caution them. It's more dangerous to say more about it than to just move on.

DENIS RANCOURT : D'accord.

GREFFIER DE LA COUR : On est prêt, Monsieur le juge?

INTERPRETER: Are we ready, Your Honour?

LE TRIBUNAL : Oui, allez-y.

INTERPRETER: Yes.

CLERK REGISTRAR: All rise.

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...JURY ENTERS (12:26 p.m.)

CLERK REGISTRAR: All members of the jury are present, Your Honour. You may be seated.

LE TRIBUNAL : D'accord, maître - monsieur Rancourt, continuons.

INTERPRETER: All right, Mr. Rancourt, please continue.

DENIS RANCOURT : Alors, vous avez la preuve vivante que je ne suis pas un avocat. Mes autres témoins, madame Mireille Gervais, qui était la directrice, qui a écrit le rapport étudiant, va être un témoin. Elle va témoigner à propos de son rapport, mais elle va aussi témoigner sur le fait que la professeure St. Lewis ne l'a pas contacté avant d'écrire son rapport d'évaluation sur le rapport étudiant et ça, c'est une question de litige très importante parce que la professeure St. Lewis dit l'avoir contacté et avoir discuté avec elle. Alors, ça va être une question importante pour vous de savoir les deux peuvent pas avoir raison. D'un côté, y'a le témoignage d'une personne, d'un autre côté, y'a le témoignage de l'autre personne et on - donc, c'est une question des plus difficiles. Du côté de madame Gervais, y'a un courriel qui a - y'a aussi une - un document écrit, qui soutient fortement sa position et ça va être à vous de décider qui a raison dans cette affaire. Si, si la - et, et tout ça, toujours, tout ce que je fais -

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bon, en tout cas. Okay. Je change de sujet. Donc, y'a Mireille Gervais. Ensuite, y'a une des étudiantes noires, qui était à l'université au moment où y'a eu - il s'est passé ces choses-là. Son nom c'est Hazel Gashoka et elle a été très perturbée par toutes ces affaires et elle est venue à la conclusion elle, que il y avait un vrai conflit parce que je me faisais poursuivre, etcétera, que y'avait des opinions différentes et elle a fait un vidéo donnant son opinion sur la question. Je suis accusé de malveillance parce que j'ai parlé de ce vidéo, parce que j'ai mis un lien à ce vidéo. Donc, on va avoir ce témoin-là pour montrer qu'il y a pas de malveillance et pour montrer la perspective de l'étudiante sur cette question. Y'aura le témoin de professeur Henry Wong, qui a fourni un document important, qui est un courriel qu'il a envoyé à la plaignante et qui n'avait pas été montré par la plaignante pendant le processus, mais que j'ai pu obtenir à la dernière minute en faisait appel à ce témoin et donc, on va parler de ce courriel très important et puis, y'a aussi un autre expert, un troisième expert, qui s'appelle Jeremy Cooperstock, qui est un professeur de génie-électrique à l'Université McGill et vous allez vous demander, mais qu'est-ce qu'un expert ingénieur en technologie vient faire dans une cause en diffamation? Et la raison, c'est

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que vous savez cette loi qui pourrait limiter cet article, parce que la, la, la limite a été passée, la loi était écrit en 1980.

INTERPRETER: So, you have the evidence before you that I am not a lawyer. My other witnesses, Mrs. Mireille Gervais, the Director of the SAC, who wrote the report, she will be another one of my witness. She will testify about her report and its drafting but she'll also testify about that Professor St. Lewis did not contact her before writing her report about the student report and that's an important issue at play because Mrs. St. Lewis claims that she did contact her. So, this is an important live issue to know that both of them can't be right. On the one hand, you have the testimony of one individual and on the other, so you - it's a most difficult question. On Mrs. Gervais' side, there's an email. There's also a document, a written document that supports majorly her position and it will be up to you to decide who's right. If - and all that, I'm doing - all right, I'll move on. So, there's Mireille Gervais and then there's one of the black students who was at the university at the time this occurred. Her name is Hazel Gashoka. She was quite taken aback by all this and she concluded that there was a real conflict because I was being persecuted. There were different opinions and she took a video of

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the opinion. I am accused of malice because I spoke about that video, because I linked to that video. So, that witness will come to show there is no malice or was no malice and to show the student perspective on this issue. There will also be the professor, Henry Wong, who supplied an important document, an email he sent to the plaintiff, but wasn't disclosed by the plaintiff in the process of the - this case but I was able to obtain that email at the last minute.

There's also another expert, a third expert, Jeremy Cooperstock, who is a professor at McGill in electrical engineering. What you're gonna say, "Good God, what will he come to testify about in a defamation suit?" You know the law that could limit because of the time bar. The light - the law was written on [sic] 1980.

LE TRIBUNAL : Il faut être prudent sur des témoins experts là...

DENIS RANCOURT : Oui.

LE TRIBUNAL : ...jusqu'à temps qu'ils soient qualifiés.

INTERPRETER: You need to be careful, sir, on expert evidence issues.

DENIS RANCOURT : Oui. Je, je ne dirais rien sur ce qu'il va dire, mais la raison que y'a - il va y avoir deux témoins experts sur la question technologique, très pointue à l'Internet et tout ça, c'est parce que quand

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la loi a été écrite, ça parlait de journaux, de télévision et de radio et depuis, y'a eu le développement de l'Internet. Alors, la question légale est, est-ce que l'Internet, c'est comme la radio, c'est comme les journaux, c'est comme un autre média vis-à-vis de la protection de cette loi-là? C'est une question légale et pour répondre à cette question légale, ça prend l'avis des experts qui nous parlent de cette technologie-là. Donc, vous allez subir deux experts qui vont s'affronter par rapport aux questions technologiques. C'est juste pour vous donner un aperçu de ça. Et je vais finir en vous donner - vous donnant quelques autres éléments. Vous savez la question de m'attaquer pour la malveillance est centrale à cette affaire parce que si j'ai été malveillant, si je n'ai pas été honnête, si j'étais - si j'ai fait ça pour des raisons autres que les raisons de communiquer et de m'impliquer dans la politique raciale de l'institution, si j'avais d'autres motifs, j'étais malveillant et si j'ai été malveillant, y'a deux conséquences importantes. Une, ma défense de *fair comment* n'existe plus et deux, il pourrait y avoir des dommages juste par le fait que j'étais malveillant. De l'argent que j'aurais - que je serais ordonné à payer. Donc, on va passer beaucoup de temps à essayer de démontrer que je suis

malveillant et que j'ai agi de façon malveillante. On va parler de *racist slur*. On va utiliser cette expression-là comme si le terme d'analyse politique, qui est utilisé par plein de gens, partout dans le monde, pouvait être, en soi, un *racist slur*, qui est simplement un insulte racial. On va donc confondre le racisme et la politique raciale et on va essayer de, de vous faire oublier ou en tout cas, on va pas le mentionner, que la malveillance, c'est des motifs impropres. C'est ça que c'est la malveillance. Ça prend des motifs impropres. Il suffit pas que l'autre personne est eu un mal. Il faut que j'ai - j'avais l'intention de faire un mal. La malveillance, c'est ça. C'est des motifs qui sont impropres. Donc, on peut parler du mal quand qu'on veut et donner plein de témoins, mais ce n'est pas une preuve de malveillance en soi. Il faut se rappeler de ça parce que c'est, c'est très important. On va aller aussi loin que de dire - que de comparer ce que j'ai fait, c'est-à-dire écrire des articles blogue et on va les regarder les articles blogue. Vous allez les voir. Y'en a 68 qui ont été écrits, suite à cette affaire, qui dure depuis trois ans, 68 fois, j'ai parlé de quand je suis allé à la Cour suprême; que quand qu'il s'est passé telle affaire; que quand - pour suivre ce qui se passait dans le processus et on va

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m'accuser dans, dans ces blogues, d'agir avec malveillance parce que j'ai communiqué des choses vraies. Comme c'est vrai que je suis allé à la Cour suprême, etcétera. Bon. On va appeler ça *cyberbullying*. Vous allez entendre ce terme-là. *Cyberbullying*, comme si c'était à propos de deux individus qui s'affrontent et qui essaient de s'intimider alors que c'est pas du tout ça. C'est une, une, un conflit de politique dans le - un institution, entre deux professeurs, mais qui, qui, qui ont différents points de vue, des critiques publiques. Ça l'a rien à voir avec le *cyberbullying*. C'est, c'est outrageux, à mon sens, de même suggérer ça, mais on va l'utiliser le terme. On va - par le fait même de décrire le stressé que vous devez évaluer, si, si il y a eu du stressé ou pas et quelle sorte de stressé et, et quelle est la nature de ce stressé? En présentant autant de preuves à propos du stressé, autant de témoins, c'est comme si ça impliquait que nécessairement, si y'a eu du stressé, y'a une cause et donc, y'a eu de la malveillance. Il faut faire attention à ça parce que ça va arriver.

INTERPRETER: Yes, I won't say anything about what he will say, Your Honour, but the reason, there will be two expert witnesses on - about Internet and those issues because when the law was written, it was newspaper, radio and television but since this - the

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advent of the Internet, is the Internet now like the radio, newspaper or TV? Is there - does it apply? And to address that legal issue, we need experts to address that issue. So, you will hear from two experts oppose themselves as to the application of the law on - in regards to technology. And I will end by giving you a few other elements. You know that the issue of attacking me for malice is central to this matter. If I have been dishonest and malicious, if I did this for other motivations and other to raise the issue of political racism in the organization, if I was - if I was malicious, there are two consequences. One, fair comment no longer holds and two, there could be damages just on account of my maliciousness. I would be ordered to pay. So, a lot of time will be spent on trying to demonstrate my maliciousness and that I behaved maliciously. You will hear racist slur. You will hear that expression as if the legal analysis term used by people everywhere in the world, could be in and of itself, a racist slur, a racial insult. So, we're going to confound, pull racial policy with racism and we're gonna try to make you forget or we won't mention it, that malice relate to improper motivation. That's what it is, malice. It's not sufficient for the other person to be impacted. What is important is that I needed to have the intent

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to injure. That is what malice is. An improper motivation is the basis. So, malice can be alluded to or raised as much as they want but it is not evidence in and of itself. You need to remember that, because it's very important. They will go so far as to compare what I did, that is to write blog articles and we'll look at them. There are 68 that were written, subsequent to this matter, that have lasted the last three years. Sixty-eight times I would - when I went to Supreme Court, when this happened - when that happened, to follow what was happening in the process and I will be accused in those blogs to having acted with malice because I communicated true things. It's true that I went to the Supreme Court, et cetera. That will be tantamount to cyber-bullying. You're gonna hear that, cyber-bullying; as if it was about two individuals that were confronting each other, whereas it's not that at all. It's a conflict, a policy conflict in an institution between two professors that have different points of view, public criticisms. It has nothing to do with cyber-bullying. It's outrageous to even suggest that, in my opinion, but you will hear that term. In the very fact of describing the stress that you need to evaluate if there were - was or not and what kind of stress, and what was the nature of that stress, in presenting as - so

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much evidence about stress and so many witnesses. It's as if it implied that it's necessarily - there was stress, there's a cause for that stress and therefore, there was malice. You need to be leery of that.

MR. DEARDEN: Your Honour....

THE COURT: Ask the jury to retire, please?

...JURY RETIRES (12:34 p.m.)

CLERK REGISTRAR: You may be seated.

THE COURT: Yes?

MR. DEARDEN: Your Honour, I object to what Mr. Rancourt has done throughout his opening. He has given evidence in-Chief and he's made arguments, the last example being that. He's starting to talk about Joanne St. Lewis' stress. He's supposed to be talking in his opening address about his evidence, what his witnesses - he's gonna call. He's giving evidence in-Chief and he wouldn't even be able to say that in-Chief, I would object immediately. It's not - he doesn't know about Professor St. Lewis' stress. It's prejudicial to be talking about this. He told the jury that they're gonna hear from two experts. No, they're not. Those experts are there for you to - first of all, you gotta decide do you need them to do the statutory interpretation of the *Libel and Slander Act* and then if you do, it's for your assistance in interpreting the Act. They're not gonna hear that. Their issue is whether the date that Professor St. Lewis discovered

the article on the objective test. And he knows that. We dealt with that a few days ago. But his whole opening, Your Honour, is argument, hearsay evidence, evidence in-Chief and not an opening. Not an opening address. This is extremely prejudicial and I'm gonna request, Your Honour, after the jury does come back, 'cause I don't want them out too long, to make an instruction about his submissions on about what the law means and what the definition of malice is and his arguments and what he says is evidence, like an email. Like he's referred to an email that Gervais - on Gervais' credibility versus Professor St. Lewis' credibility? There's a couple of times he challenged Professor St. Lewis' credibility in an opening address to the jury. He can't do that. It's - I have more red ink on this paper than I do blue ink, taking notes. Anyway, Your Honour, I just find this opening absolutely stunning.

DENIS RANCOURT : Je - est-ce que je peux répondre? Je - c'est - oui, y'a une erreur. C'est vrai que j'avais oublié là, le - l'affaire des experts, que c'est une question de droit. Donc, le jury va pas l'entendre. Ça, c'est une erreur de ma part. Je, je m'en excuse complètement. J'ai, j'ai travaillé très fort et - sur cet - ces, ces trucs d'ouverture puis là, c'est un point qui m'a,

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qui m'a échappé. Je m'excuse de ça. Pour ce qui est de - que le - Monsieur le juge, chercher des corrections immédiatement pendant mon, mon énoncé d'ouverture, je m'objecte fortement à ça parce que ça, ça serait très préjudiciable contre moi. Je pense que les erreurs dont monsieur Dearden parle, sont des erreurs d'une personne qui n'a jamais fait un énoncé d'ouverture avant et que je pense que la, la façon normale, ça serait que j'essaye de corriger le tir avec les commentaires que vous allez me donner maintenant et puis que, ensuite, il puisse y avoir des actions nécessaires quand il y aura - on aura à considérer tout ça à la fin.

INTERPRETER: Can I reply? Yes, there is a mistake. It's true that I had forgotten the issue of expert, that it's a point of law and that the jury will not hear that. It's my mistake. I apologize about it. I worked very hard on this opening thing and that's an element that escaped me. I apologize about that. As far as you make a direction during my opening, I object vehemently to that because that would be very prejudicial against me. I think that errors that Mr. Dearden is speaking of is - are mistakes of a person who has never made opening statements [sic] before and I think that the normal way would be to try and correct with your help now, what you'll supply me and that I can -

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and that we can look at that when we need to consider that.

LE TRIBUNAL : Il est toujours - c'est - j'apprécie - je comprends là que vous êtes pas un avocat, etcétera, mais vous ne pouvez pas, pour commencer, faire strictement des arguments pendant une ouverture. Ça, c'est réservé pour la fin. Une fois que la preuve est devant le jury et que la preuve admissible est devant le jury, vous pouvez dire : « Ne croyez pas tel témoin. Croyez tel témoin pour telle et telle raison. » Vous pouvez pas faire ça dans une ouverture. On sait pas la preuve. C'est pas juste. Vous ne pouvez pas aller à la longueur que vous allez pour décrire le droit. Vous avez dit un paquet de choses - je vais être obligé de le mentionner - qui n'est pas le droit ou qui est une opinion que vous avez du droit et c'est - donc, oui, vous pouvez référer au droit pour étoffer certains aspects, oui, et expliquer - et pour qu'ils comprennent qu'est-ce que vous allez présenter comme preuve, mais vous ne pouvez pas aller à grand...

DENIS RANCOURT : Mais...

LE TRIBUNAL : ...argument et à grand déploiement de ce qui est le droit et ainsi de suite.

INTERPRETER: You know, I understand and I can appreciate that you're not a lawyer but you cannot, first off, strictly making

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arguments during an opening. That is reserved for the closing. Once the evidence has gone in before the jury and that it has been deemed admissible and received by the jury, you can say, don't believe that with this - believe this reason instead, for this, this reason. You can't do that in an opening, 'cause we don't know the evidence yet. You cannot go and in - delved into the state of the law. You have said all kinds of things that I'm going to have to mention to them, which is not the state of the law or that it is in your interpretation or opinion. So, yes, you can refer to the law to explain certain elements as to what you're going to present but you cannot go in length to explain in - at length, arguments and with important effort as to what the state of law is.

DENIS RANCOURT : Monsieur le juge...

INTERPRETER: Your Honour...

LE TRIBUNAL : Donc, le problème, c'est que vous avez régulièrement fait des arguments.

DENIS RANCOURT : Mm.

LE TRIBUNAL : Puis c'est ça qui est...

DENIS RANCOURT : Okay.

LE TRIBUNAL : ...le problème.

INTERPRETER: The problem is that you have regularly made arguments and that is problematic.

DENIS RANCOURT : Je comprends. Non, je

comprends.

INTERPRETER: I understand...

LE TRIBUNAL : On - vous êtes simplement après faire une petite mappe là au jury, de qu'est-ce qui peut s'en - qu'est-ce qu'ils doivent porter attention, qu'est-ce que vous pensez de présenter qui va pouvoir vous aider sur la question de telle défense ou telle défense, pas faire des arguments et que vous avez faits.

INTERPRETER: You are only making a roadmap for the jury, telling them what they need to pay attention to, what you anticipate presenting as to help them understand your defence of this and that. It's not to make argument, as you've done.

DENIS RANCOURT : Monsieur le juge, monsieur Dearden, ce qu'il va dire sur le droit, est sujet à la même chose, c'est-à-dire, vous allez dire au jury que les deux parties ont dit des choses sur le droit, le droit qu'il ne faut pas regarder, ne faut pas tenir en compte. Vous allez dire ça...

INTERPRETER: Your Honour, Mr. Dearden will say as to the state of the law, on the same issue, you will tell the jury that both parties have alluded to points of law that they do not - I - not to - that they not to be concerned.

LE TRIBUNAL : Bien, je dis pas que c'est exclu à cent pour cent. Je vous dit vous

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5 pouvez référer au droit. Vous pouvez dire,
par exemple, vous pouvez dire que vous allez
tenter d'établir une défense de faire *comment*
parce que le droit permet - si on peut
prouver telle, telle chose. Donc, moi, je
vais tenter de prouver telle - ça, c'est
correct, mais c'est lorsqu'on arrive puis
qu'on fait des déclarations. On va beaucoup
plus loin que ça sur qu'est-ce qui est le
droit. On - des arguments de - ou des
10 directives de droit spécifique, c'est ça que
vous pouvez pas faire et vous en avez faite
plusieurs. Je n'ai pas ici de - dans le - la
déclaration d'ouverture de monsieur Dearden,
quoi que ce soit, où il faisait une
déclaration de droit sans que ça soit
15 rattaché à la preuve qu'il entend à appeler
sans faire des - spécifiquement de référence.
Alors, c'est ça qui est la différence, mais
s'il vous plaît, tenez vous en et je vais
faire certaines directives, c'est certain,
20 mais je pense que je vais attendre après que
vous ayez fini.

INTERPRETER: I'm not saying that it's
excluded entirely. For example, you can say
that you will attempt to establish a fair
comment defence because the law can show if
you can establish so and so and so. And I
will try to show that. That's proper but if
- when you put out statements and go much
30 further into what the law is, directions as

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to the law, you can't do that and you've done many. I do not have here, before me, the opening statement from Mr. Dearden where he has made any bold face comments about the law without linking it to what his anticipation would be on the evidence he calls. So, that's the distinction between the two of you. Please, you're on notified [sic] - duly noted. And that's what I think I'm going to do after you're done.

DENIS RANCOURT : Monsieur le juge, est-ce que vous prévoyez faire des directives immédiatement après que j'ai fini?

INTERPRETER: Your Honour, are you planning to make corrections immediately after I have completed?

LE TRIBUNAL : Oui, après que les deux personnes ont fini, oui.

INTERPRETER: Yes. Once both of you have been - will be done.

DENIS RANCOURT : Okay, parce que je - okay.

INTERPRETER: All right.

LE TRIBUNAL : D'accord. Bon. Rappelons le jury.

...JURY ENTERS (12:42 p.m.)

CLERK REGISTRAR: All members of the jury are present, Your Honour. You may be seated.

DENIS RANCOURT : Alors, pour conclure, je vais donner des évidences, pendant cette cause, que j'ai toujours agi honnêtement et sans malveillance. C'est vrai que je suis

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une personne qui critique beaucoup. C'est vrai que j'ai toujours fait ça, toute ma vie. C'est vrai que j'ai subi toutes sortes de conséquences de personnes qui n'aiment pas se faire critiquer, mais je l'ai toujours fait honnêtement et dans le but de changer les choses et dans le but de, de, de créer un vrai discours, dans le, le but de provoquer - je, je vais donner cette évidence-là, provoquer assez pour que ça change vraiment les choses et aussi, dans le but que d'autres se sentent capable de faire des critiques semblables, pour que les étudiants eux-mêmes aient le courage de critiquer même le président de l'université. Il faut que quelqu'un puisse le critiquer sévèrement pour qu'il voit que c'est faisable. On peut faire ça. Ça, c'est un peu ma philosophie. Dans notre société, on a besoin de personnes qui font ça. C'est essentiel. Ça fait partie de notre communauté démocratique, de brasser les choses comme ça et de - et de faire ce genre de choses et c'est ce que je fais et je le fais honnêtement de bonne foi et c'est, c'est ça que je vais, je vais dire dans mon témoignage. Merci beaucoup.

INTERPRETER: All right, in conclusion, I'm going to present evidence in this matter that I have always acted honestly and without malice. It is true that I am an individual who criticizes a lot. It's true that I've

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5 always done this my whole life. I have been
subjected to all kinds of consequences from
individuals who don't appreciate being
criticized, but I've always done this
honestly and in the hopes - hope of changing
things and in the hope of fostering dialogue
and to provoke - to - in such a way, to
provoke and motivate change so that other
people can also feel empowered to criticize
in the same way, so that the students can -
10 that also them feel that they can criticize
their university president. They need to see
someone doing it so that they realize that
they could also do it. That's my philosophy,
essentially. We need those kinds of people
in our society. It's part of a community,
15 democracy, to stir things up and to advance
those kinds of issues and that's what I do
and I do it honestly in - out of good faith
and that's what I'm going to advance in my
testimony. Thank you.

20 LE TRIBUNAL : Merci. Juste quelques
commentaires avant qu'on prenne la pause pour
l'heure du midi. Il y a eu beaucoup de
commentaires qui a été faits relativement au
droit qui s'applique. Je vous l'ai dit
25 originalement là ou initialement quand je
vous ai donné des instructions lundi, c'est
que ce qui est dit par un ou l'autre des
partis concernant le droit et qui est
30 différent de ce que je vais vous donner comme

le droit, vous devez prendre ce que je vous dis qui est le droit. Un des exemples que y'a eu un problème ici, en autre là, c'est que y'a eu un problème lorsque monsieur Rancourt a commencé à parler que y'avait une défense d'abus de procédure. Ça n'existe pas dans le contexte de ce qu'il écrivait ou tentait de vous décrire, relié aux dommages réels ou quoi que - ça existe - c'est pas une défense. Donc, il faut que vous éliminiez ça de votre tête. C'est pas une question - il faut éliminer ça de votre tête. Un autre exemple, c'est que dans un exposé initial, ce n'est pas le temps de faire des arguments et vous devez mettre de côté donc, ce qui était des arguments. Les arguments, c'est pour la fin. Si quelqu'un dit, bien, il n'y a pas d'impact concernant un tel blogue ou y'a pas d'effet sur - ça, c'est des arguments. Ça - la preuve puis vous, vous allez décider ce que sont les faits. Ça va être sur les - la preuve. Vous allez arriver à des conclusions s'il y a, oui ou non, certaines conséquences, s'il y a, oui ou non, telle, telle chose. Quels sont les faits? Les procureurs - les partis pourront, avant que vous décidiez, vous dire leurs arguments pourquoi vous devriez trouver tels faits à comparer à un autre fait, mais tout ce qui a été dit en argument là, mettez ça de côté, s'il vous plaît, parce que c'est - ça vous aidera pas.

Il faut vous - tout ce qu'on a là ici, c'est que tout ce qui a été dit par monsieur Dearden et par monsieur Rancourt, ce n'est pas de la preuve. C'est sensé vous aider à comprendre un peu mieux ce qui va se dérouler pendant le procès. Il se peut qu'il y est des choses qui a été dit que vous entendrez jamais dans la preuve. Ça se peut. Y'a des choses qui a été dit, qui a été suggéré, qui vont - que la preuve va indiquer exactement le contraire. Ça se peut, mais ce que vous allez - la base que - sur laquelle vous allez décider qu'est-ce qui est arrivé entre ces parties-là, qu'est-ce qui c'est dit, qu'est-ce qui c'est fait, quel effet ça l'a eu et ainsi de suite, ça va être basé sur ce que vous allez entendre pendant le procès; ce que les témoins vont dire; ce que les pièces, qui vont être déposées, disent. C'est ça qui est - que vous devez retenir de cette première exercise ici. Donc, on va prendre la pause du midi jusqu'à deux heures.

INTERPRETER: So, just a few comments before we take the lunch break. There were many comments made about the state of the law. I told you at the onset, when I gave you my initial directives, that what is stated by one or the other party, as to the state of the law and that if it defers from what I give you, as being the law, you are duty bound to take what I tell you about the state of the law. One of the examples, there was

a problem when *monsieur* Rancourt started to talk about abuse of process. That does not exist in the contents of what he was trying to describe to you or related to the real damages. It's not a defence. You need to put that out of your mind. It's not a defence. Another example is that of - in an opening, it's not the time to make argument and you need to put aside then what was argument. Arguments are for closing. If someone says, for example, there is no impact about giving blog or there's no effect, that is for argument. The evidence you will establish with the facts are based on the evidence and you will draw conclusions as to whether yes or no, there are certain consequences or there is this other fact. The lawyers, the parties, will, before you decide, why you should adopt one fact versus another but everything that you've been offered as argument, put that aside because it will be of no service to you. Everything that was put by Mr. Dearden and Mr. Rancourt, it is not evidence. It is supposed to be a roadmap to help you understand what's going to happen in the trial. Things may have been said to you that you'll never hear in evidence. That's possible. There are things that may have been said that were suggested to you that the evidence would bear out but in fact, it will bear out in complete opposite, but the basis on which you will decide what happened between these parties, what was said, what was done, what effect it had, et

cetera. Those will be based on what you heard at trial from the witnesses, from the exhibits that will be filed. How those speak to you. That is what you need to retain from this first exercise. So, we're going to break for lunch until two o'clock.

...JURY RETIRES (12:47 p.m.)

THE COURT: Yes, sir?

MR. DEARDON: No, I was just standing.

LE TRIBUNAL : Deux heures.

MR. DEARDON: Thank you, Your Honour.

INTERPRETER: 2 p.m.

MR. DEARDEN: And then we'll call Professor St. Lewis as the first witness?

THE COURT: Yes.

(12:48 p.m.)

R E C E S S

U P O N R E S U M I N G : (2:02 p.m.)

THE COURT: Call the jury.

DENIS RANCOURT : Monsieur le juge, avant de faire rentrer le jury, j'ai une question procédurale. Je sais pas quand - une fois qu'on aura...

INTERPRETER: Your Honour, before the jury steps in, I'd like to ask for procedures, a procedural matter.

LE TRIBUNAL : Il faut le dire avant qu'on l'appelle.

THE COURT: Do you want to hold the jury out, please?

CLERK REGISTRAR: Yes, Your Honour.

DENIS RANCOURT : Juste une petite question.

INTERPRETER: A small question.

LE TRIBUNAL : Oui.

DENIS RANCOURT : C'est parce que monsieur Dearden a - nous a informé...

CLERK REGISTRAR: Wait, the door is opened.

THE COURT: Okay. No, no. Leave...

CLERK REGISTRAR: Yes, Your Honour.

THE COURT: We don't want the jury to come in. Okay. Okay.

DENIS RANCOURT : Juste - parce que monsieur Dearden nous a informés qu'il va réorganiser l'ordre des documents qu'il va utiliser puis il a des livres spécifiques pour son témoin, des livres de documents et je veux juste m'assurer que je vais avoir une copie de ces livres-là, que je puisse suivre les documents qui sont présentés en même temps.

INTERPRETER: Mr. Dearden has - before - Mr. Dearden informed us that he will reorganize the order of documents that will be presented and he has specific books of documents for his witness. I just want to ensure that you have the copies of those booklets, so that I'll be able to follow this and them.

MR. DEARDEN: You gotta enter them as an exhibit first but if you wanna.... This is the exhibit.

DENIS RANCOURT: Okay.

DENIS RANCOURT : Je voulais juste m'assurer de ça, que je - j'allais avoir une copie pour pouvoir suivre.

INTERPRETER: Yes. I just wanted to make sure that I would have a copy of these documents.

DENIS RANCOURT : Okay.

LE TRIBUNAL : Il faut que les deux partis fournissent à chacun, et vous de même et lui de même, de façon à ce que les gens aient de quoi - pour que ça procède de façon coordonnée et que...

INTERPRETER: Yes, both parties have to provide, you to him and him to you, the documents so that this proceeds in a...

DENIS RANCOURT : Organisée, oui.

LE TRIBUNAL : D'accord.

DENIS RANCOURT : Je voulais juste m'assurer parce que j'ai déjà les documents, mais dans une forme et dans un ordre différent.

INTERPRETER: Yes, I just wanted to ensure because I have these documents in the form and perhaps in a different order.

LE TRIBUNAL : Oui, c'est bien.

DENIS RANCOURT : C'est pour ça. Merci.

INTERPRETER: Thank you.

THE COURT: Bring the jury in.

CLERK REGISTRAR: All rise.

...JURY ENTERS (2:05 p.m.)

CLERK REGISTRAR: Members of the jury are present. You may be seated.

THE COURT: All right. Good afternoon. We're ready to go with the first witness. Mr. Dearden?

MR. DEARDEN: Thank you, Your Honour. I'd call Professor Joanne St. Lewis to the stand, please.

JOANNE ST. LEWIS: SWORN

(2:06 p.m.)

EXAMINATION IN-CHIEF BY MR. DEARDEN:

MR. DEARDEN: So, Your Honour, can I enter as Exhibit 1, yeah, we have to do - do you have your copy?

A. Yeah, I'm sorry.

MR. DEARDEN: She has her own.

A. Mine are there. I'm sorry.

MR. DEARDEN: Enter as Exhibit, Volume 1, Book of Exhibits, Professor St. Lewis and as Exhibit 2, Volume 2 of the Books of Exhibits of Professor St. Lewis?

DENIS RANCOURT : Objection. Dans ma copie, il, il y a le document qui a été exclu déjà. Le - à l'onglet...

INTERPRETER: I object. In my copy, the document is a document that's been excluded however, at Tab...

MR. DEARDEN: Yeah, we pulled it.

DENIS RANCOURT : Ah.

MR. DEARDEN: We pulled it out.

R. Là, y'en a pas.

DENIS RANCOURT : Okay, mais ce document, c'est quoi?

INTERPRETER: Yes. But this document...

R. C'est le Index.

INTERPRETER: It's the Index.

DENIS RANCOURT: Ah, je m'excuse.

A. Thank you.

INTERPRETER: I apologize.

DENIS RANCOURT: Excusez-moi.

INTERPRETER: Yes, I apologize.

R. Pas de problème.

DENIS RANCOURT : Excusez-moi.

LE TRIBUNAL : C'est le contenu.

DENIS RANCOURT : Oui, je m'excuse.

THE COURT: All right. So, Volume 1 and Volume 2 then. Volume 1 will be Exhibit 1 and Volume 2, Exhibit 2.

MR. DEARDEN: And can we distribute those volumes to the jury, Your Honour?

EXHIBIT NUMBER 1: Volume 1 Book of Exhibits, Professor St. Lewis - produced and marked.

EXHIBIT NUMBER 2: Volume 2 Book of Exhibits, Professor St. Lewis - produced and marked.

DENIS RANCOURT: Excusez-moi, Monsieur le juge, mais là, je comprends pas. Est-ce que tout en même temps, en bloc, est accepté comme exhibit parce que y'a peut-être des documents un par un, auquel je vais

m'objecter. Alors, je pense que on peut pas mettre les livres entiers en exhibits tant - il faut les voir un à un et les - et voir si ils sont acceptables comme exhibits, un à un.

INTREPRETER: Excuse me, Your Honour, but I don't understand. Is two as a - and it's all is included as an exhibit or they're - because there may be individual documents that I - to which I object, so I suspect that we can't say that - I say that we can't subject the entire booklet as an exhibit. We

have to see them individually to see if we're - acceptable as exhibits.

LE TRIBUNAL : Non, on va - ce qu'on va faire, c'est que le procureur va référer à certains documents et au fur et à mesure du témoignage...

DENIS RANCOURT : Mm-hmm.

LE TRIBUNAL : ...et puis si jamais y'a des documents qui sont pas prouvés ou qui sont - pour quelque raison que ce soit, pas admissibles, ils vont être retirés, mais c'est mieux travailler avec des livres que de travailler avec des papiers looses. C'est ça.

INTERPRETER: No, what we'll do is counsel will refer to certain documents along - as the witness testifies and if there are documents, which are shown to be, for whatever reason, not admissible, they will be withdrawn but we will be working with the book - booklets as it's better than individual papers.

DENIS RANCOURT : Oui, et donc, le jury va les voir, même...

INTERPRETER: And as such, the jury will see them...

LE TRIBUNAL : Mais le jury les verra pas comme tels là. On va les présenter un à un au témoin et puis, le jury va se référer aux onglets qu'on va lui référer, seulement.

INTERPRETER: And the jury will not see them as such. They will be presented one at a

time to the witness and the jury will refer to the tabs that we will refer to.

DENIS RANCOURT : Merci.

INTERPRETER: Thank you.

MR. DEARDEN: May I proceed, Your Honour?

THE COURT: Yes.

MR. DEARDEN: So, the jury can have their volumes?

THE COURT: Yes, yes. *Comme j'ai* - as I just explained is that in order to make it more efficient, often, especially in the older days, we used to introduce exhibits as one page and then another page, and then another page, but it becomes cumbersome to do so. So, this is all naturally subject to - any of these documents are subject to be referred to, properly identified and accepted in evidence through witnesses, either this witness or possibly other witnesses, if that is the case but it's only when they've been formally identified by a witness that they become evidence and they will, therefore, be - they're given to you at this time in bulk, so that you could refer only to the attached that are being referred to as we go along and naturally, they will be filed as an exhibit and ultimately, all the exhibits, which ultimately are admitted in the proper way during the trial, will end up in your jury room and you'll have access to them to deliberate. All right?

MR. DEARDEN: Q. Good afternoon, Professor

St. Lewis.

A. Good afternoon.

Q. So, Volume 1, Tab 1, is your curriculum vitae?

A. Yes, it is.

Q. And I want to briefly review some highlights of your career as a lawyer and a law professor. You've been an assistant professor at the Faculty of Law at the University of Ottawa since 1992?

A. Yes, I have.

Q. And what year did you receive tenure?

A. 2001.

Q. 2001. And where did you obtain your undergrad degree?

A. I did my undergraduate degree at McGill University and I did my law degree at the University of British Columbia.

Q. And when did you...

A. Oh, sorry, yeah.

Q. ...graduate from UBC?

A. I graduated from UBC in 1993 and I was called to the bar in British Columbia in 1984.

Q. So, you probably didn't do that.

A. What nine - what did I say?

Q. You said 1993.

A. 1983. Oh, sorry. Oh, I made myself younger. I just had a recent birthday. Okay, 1983 was my graduation from law school and 1984 was my call to the bar.

Q. And we've established that the bar isn't one where one celebrates a hockey game?

A. No.

Q. When did you become licensed to practice law in Ontario?

A. In 1997.

Q. '97. And how many black women were called to the bar in Ontario when you were called?

A. In Ontario?

Q. Yeah. Well, let's...

A. I...

Q. ...do B.C. first.

A. I, I don't know the Ontario numbers but I - in terms of B.C., I was the only black woman in my law class. I did an academic call in Ontario. So, our call is much smaller so my call section had no other black woman but I, I wouldn't be aware of who else might've been in any of the other classes in 1997, getting called.

Q. So, call is a fancy word we use to...

A. To obtaining the licence to practice essentially. It's a formal process where you have to be there, in person, and you swear a number of oaths that at that time, in terms of the barrister's oath and a solicitor's oath, which are two parts of the practice of law and then you're entitled, once you meet certain conditions, to practice law and to give advice to clients. Other than that, you're not supposed to engage in that kind of activity.

Q. And the body that approves you to be licensed to practice law is what?

A. The Law Society of Upper Canada in, in Ontario.

Q. Right. And you eventually became a

bencher of the Law Society of Upper Canada in 2002?

A. 2001, December.

Q. 2001? And what's a benchers do?

A. Essentially, it's the governing body of the profession and I would say there are two aspects to what benchers do. One aspect is the key, which is how do people become lawyers? What are the qualifications? So, the licensing, the bar admissions program is what we call, what law students graduate from law school have to do in terms of academic and practical requirements to get the licence. So, we set the criteria. We manage that process. At the same time, I'm saying "we", though I'm not presently a benchers and in addition to that, all of the criteria for people remaining in practice. So, if you have a complaint, for example, as a member of the public, we would be looking at the qualifications, the, the, the complaint that you've made. It may be resolvable. We may have to hold a hearing to look at the matter with witnesses and all of those pieces. And we might make decisions if somebody has to be suspended or perhaps disbarred, as well as retirement and other things. And we do policy; a range of policy things that affect members of the legal profession and deal with the administration of justice more broadly.

Q. And did you sit on any disciplinary hearings of lawyers who had complaints filed against them?

A. Well, I've written over 35 decisions and sat on more than that. I was a benchers for eight years and one of the responsibilities that you have as a benchers is actually sitting on those disciplinary matters and I was one of the persons that had a pretty high load in that sense. We do it at the same time as we're doing another

job. So, it's actually a fair amount of work on the side.

Q. And when you were elected as a bencher, how many black women had been elected as a bencher, prior to that time?

A. I am - I'm the first and only black woman to have ever been elected as a bencher in the 217-year history of the Law Society of Upper Canada.

Q. And you've received some awards, which I'll just review. And I'll start in 2000. You received the Black Law Students' Association of Canada Student Leadership Award?

A. Yes, I did.

Q. And what does that award recognize?

A. I was the founding national advisor for the Black Law Students' Association of Canada, for the first 17 years of its existence. It is an association that links together all the black law students across the over 21 faculties in the country and they come together, obviously on issues of common interest. They hold conferences. They engage in mentoring high school students and drawing other people into the legal profession and I was, what they call, the national faculty advisor and the award came some years after I had done that work. A particular executive wanted to recognize the, the historical relationship I had with the organization.

Q. And in 2001, you received the Canadian Association of Black Lawyers Recognition of Black Women's Contribution to the Law Award?

A. Yes. The Canadian Association of Black Lawyers is, at this point, about 17 years old. The Black Law Students' is actually an older organization. It's

about 26 years old. And the association recognized me amongst, I think in that year, there were 10 or 12 honourees, for my contributions to the legal profession but in the context of my contributions as well to the black community.

Q. And Ottawa Life Magazine recognized you as one of the top 50 people in this city in 2004?

A. Yes. That was - that recognition is much more eclectic. The magazine was recognizing 50 people living in the Capital who do, from a wide range of, of areas of activity and I was one of those 50 people in, in that particular group. That year happened to include Stephen Lewis and - but also people running some of the local corporations and that sort of thing. So - but it - the idea was that the level of work that we were doing is something that was noteworthy and contributing to the broader community in the Greater Ottawa area.

Q. And in 2008, you received an award from the - of the DreamKEEPERS Life Achievement Award from the Martin Luther King Junior Day Coalition?

A. Yes. That, that award's quite special. It's recognizing my anti-racism work and my social justice work over the span of my career and in that context, it's speaking to the way in which I was a role model for other people in terms of the work that I had done. So, it's actually an award that's one of the - all, all awards are special but I'm saying that one had a certain particular significance for me and it was a life achievement. I, I, I think the part of it was because it seemed to be looking at the arc of my contribution over my whole career. So, that's - and it was the first time I had gotten an award

of quite that stature, so....

Q. And then in 2009, the Canadian Association of Black Lawyers Recognition Award?

A. Yes. That was - the first award much earlier was recognizing black women and part of the, the driver behind that first award was to recognize that black women within the profession were making a difference. This award was a, a much more general in, in nature so it was black men and women receiving the award and recognizing us for the work that we'd done, and again, it was looking back at our contributions over a, a fairly lengthy period of time in our career.

Q. And 2009, the United Nations Association of Canada honoured Champion Award for its 100th anniversary of International Women's Day?

A. Yes. The United Nations Association of Canada recognized a small group of us. I think it was either 10 or 12 of us in terms of our work as feminists and work for women in the community and I was one of the honourees on that occasion. So, that, that too was important to me because in the context of that award, there weren't - I, I believe I was the only women of colour in that group that was recognized, and so part of it was knowing that I was also being representative in that way and bringing that contribution and that visibility to the award, and the fact that we made contributions as racialized women to social justice issues and other issues in the community, as feminists.

Q. And in 2012, National Hero Award from the Black Law Students' Association of Canada?

A. Yes. That was a decision of another

executive of the Black Law Students to recognize the work that I had been doing, both for the black law students I would argue and some of the advocacy work I had been doing outside and some of the work I'd been doing within my own law school for black law students.

Q. And what are your areas of specialty?

A. My main area of work is human rights, generally and a lot of the courses that I teach - I'm - I'll first talk about teaching because I also have work that I do in terms of projects outside of the law school but in terms of my teaching, my courses always intersect with some aspect of, of human rights or what I call social justice because I find that a much broader and more inclusive term for the kind of work that I do and I've taught in the past, courses on the *Charter*. I - for a couple of years, had a course on social justice in documentary film. I presently teach a civil liberties course. I've taught it off and on over a number of years. I've taught courses on African women and the law. I've taught courses on comparative constitutional law, looking at the South African constitution; the *Canadian Charter of Rights and Freedoms*. I've done courses on critiques of international trade. These are all seminars that I've designed to meet different areas of interest that students may have. So, I have a wide range of interests, as well as teaching some, what I call sort of bread and butter fundamental courses. I teach administrative law and I also teach, right now, legislation and public law. These are sort of bread and butter fundamental areas that students have to master and those classes tend to be much larger in size than the seminar classes.

Q. Okay. So, I want to just take you now to the articles in issue in this libel action.

MR. DEARDEN: And, Your Honour, could I enter as exhibits, the highlighted versions that I refer to in the opening, please? So, Exhibit 3 would be the February 11, 2011 U of O Watch article titled, "Did Professor Joanne St. Lewis act as Allan Rock's house negro?" I'll just let you enter that, Mr. Registrar.

EXHIBIT NUMBER 3: February 11, 2011 U of O Watch blog - produced and marked.

MR. DEARDEN: And Exhibit Number 4 would be the U of O Watch article, May 18, 2011, titled "Top Dog Canadian Freedom of the Press Lawyer Targets U of O Watch Blog." And, Your Honour, do you have copies of those?

THE COURT: I do.

EXHIBIT NUMBER 4: May 18, 2011 U of O Watch blog - produced and marked.

MR. DEARDEN: And those are also reproduced at Tab 2 and 3 of the first volume of Exhibit Number 1.

Q. Now, can you turn to Tab 4, Professor St. Lewis, of Volume 1? It should be a letter dated May 16, 2011, from me to Mr. Rancourt?

A. I do have it.

Q. You have that?

A. Yes, I do.

Q. And paragraph 3 of that letter says, "Without prejudice to Miss St. Lewis, right to commence an action against you and to attempt to litigate the damages your defamatory statements have caused. Miss St. Lewis

would demand that the false defamatory and highly offensive racist statements about Miss St. Lewis be immediately taken down." What did Mr. Rancourt do in response to this notice?

5 A. He actually posted another blog post.
That would be the May 18th's blog post.

10 THE COURT: May I just give a little
direction here to members of the jury? It
may be a good time to talk about hearsay and
limited purpose of certain evidence. You
probably heard about the fact that hearsay,
that is what somebody was not testifying in
15 court, said and it's being presented by a
person who is testifying, saying so and so
did such and such a thing or et cetera, et
cetera. Hearsay is not admissible to prove
that the contents of the statement, what is
said by that person is true. I mean that
can't be used, made but we can introduce
20 hearsay if it's only to show that the
statements were made. That the - so, that's
a big difference. Not what is said in the
statement is true, but the fact it was made.
So, as an example, this notice technically is
25 hearsay in the sense that it's something that
was written, not by this witness, but that it
was a - that it was said and done and sent to
somebody. Now, the contents, if there's
something in here, some facts, which are
30 alleged there, you can't say by reading this
letter that's true but it - you certainly can
say that the author of the statement, in this

5 case, the author of the letter said this to that person. All right? So, you can see the difference. It may help with the - as you go along, there'll be other examples but I want you to keep that in mind that sometimes we introduce statements made by somebody who is not testifying. That wouldn't be admissible unless there's certain - there are certain exemption that we may deal with later on but 10 they certainly can be introduced for the fact that they were said or they were written. They were notified. They were communicated to somebody. All right? Okay. Sorry. You may proceed.

15 MR. DEARDEN: Thank you, Your Honour.

Q. So, Professor St. Lewis, this response to this letter it was what again?

A. The May 18th's blog post that's at Tab 3. The top - he posted your picture. He posted.... He did 20 not - the bottom line is, he did not take down the blog post. He did not apologize or retract. He blogged.

Q. If you return to page, 'cause we don't have the - in fact, Ms. Semenova, can you fire up the Internet and find this particular blog for us, please? 25 'Cause I want to hit the link that shows the letter. So, he got served.

DENIS RANCOURT : Objection.

INTERPRETER: Objection.

LE TRIBUNAL : Objection?

INTERPRETER: An objection?

30 DENIS RANCOURT : Oui.

LE TRIBUNAL : Est-ce que c'est procédurale ou substantif?

INTERPRETER: Is this a procedural or is it substantive procedural?

DENIS RANCOURT : Procédurale.

LE TRIBUNAL : Si c'est purement procédurale, peut-être qu'on peut le faire en présent du jury. Si vous pensez c'est substantif et que le - on va - je vais demander au jury de s'absenter.

INTERPRETER: If it's procedural, perhaps we can do with the jurors present. If it's substantive, if you believe substantive, I will ask the jury to be excused.

DENIS RANCOURT : Je crois que c'est procédurale uniquement.

INTERPRETER: I believe it's procedural, Your Honour.

LE TRIBUNAL : Okay, allez-y.

INTERPRETER: Yes, go ahead.

DENIS RANCOURT : Alors, à ma compréhension, on a pas accepté ou on a pas fait un ordre qu'on pouvait se connecter directement à l'Internet depuis cette salle et qu'on pouvait présenter des informations qui sont présentement et directement à l'Internet ou y'a pas eu - je pense monsieur Dearden avait parlé de faire une telle demande, mais y'a pas eu d'ordre qu'on, qu'on pouvait faire ça et personnellement, je m'objecte parce que...

INTERPRETER: As I understand this, we have

not accepted or there has not been an order that we can be connected directly to the Internet from this room and we can produce information that is currently on the Internet. I believe, Mr. Dearden had talked about such a request but there's been no order that's been done and personally, I object.

LE TRIBUNAL : Okay. Bien dans ce cas-là, ce que vous me dites c'est que vraiment, ça devrait être le sujet d'une discussion et d'une décision, si on peut le faire.

INTERPRETER: So, what you're telling me is that this should be the object - subject of a discussion, a decision as to whether we can do this?

DENIS RANCOURT : Okay.

INTERPRETER: Yes.

LE TRIBUNAL : Mais je vais vous demander, messieurs, dames, du jury de vous retirer puis on va avoir une discussion là-dessus.

INTERPRETER: I will ask ladies and gentlemen of the jury to withdraw and we'll have a discussion on this topic.

...JURY RETIRES (2:30 p.m.)

CLERK REGISTRAR: You may be seated.

LE TRIBUNAL : Peut-être que vous pouvez m'expliquer davantage pourquoi vous vous objectez à ce qu'on puisse introduire des documents qui sont présentement sur - en ligne?

INTERPRETER: Perhaps you can elaborate as to

why you object that we may bring forth documents, which are presently online?

DENIS RANCOURT : Oui. Alors, c'est - il est très bien établi en droit et jusqu'à la Cour suprême qu'un, un lien à un document, c'est une adresse qui mène à une place où il y a un document, mais c'est pas nécessairement le même document qui était là, il y a un mois ou hier ou avant-hier ou y'a trois ans. En autre mot, le même lien - le, le document qui est à ce lien peut être changé et donc, y'a aucune façon de savoir et ça, la Cour suprême l'a très bien reconnue. Je me souviens pas du nom de l'autorité, mais dans une motion, on avait débattu ça avec monsieur Dearden et il est très clair qu'un lien - la Cour suprême a dit un lien, c'est comme faire référence à quelque chose dans une bibliothèque, mais quand on va à la bibliothèque pour voir, peut-être quelqu'un a écrit quelque chose dans le livre; peut-être que quelqu'un a souligné quelque chose dans le livre; peut-être que le livre a été changé puis - il est à la même...

INTERPRETER: Yes, well, it's well established in law and to the Supreme Court level that a link to a document is an address, which brings to a location where the document is held but it may not be the same document that was there a month, yesterday, the day before or three years ago. So, the

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10
link, which is on that link, may be changed and there's no way to verify and the court, the Supreme Court has clarified this. I do not recall under which authority but I remember this motion that was discussed or debated with Mr. Dearden, the Supreme Court has said to a link is similar to a library reference but someone in a library, someone may have underlined or written something in the book or perhaps a book may have been changed.

LE TRIBUNAL : Oui, je comprends ce que vous voulez dire.

INTERPRETER: Yes, I understand what you're saying.

15
DENIS RANCOURT : Alors...

20
LE TRIBUNAL : Si on y va, si y'a quelque chose qui est en ligne en janvier puis on y va en octobre, est-ce que c'est la même chose qui était là en janvier? On ne peut pas être certain. C'est ça votre argument?

25
INTERPRETER: If we look at something, which is online in January and if we verify it in October, it's not - is it the same thing? We can't be sure. Is that your argument?

30
DENIS RANCOURT : Oui et même, on le sait que y'a, y'a des changements. Y'a des différences parce que y'a des, des choses à un - sur une page Web qui sont actifs, qui, qui changent avec le temps et y'a plein de choses comme ça et aussi, on, on, on ne peut pas savoir. Alors, pourquoi pas s'en tenir à

5 - aux documents papiers qui ont été servis,
qu'on sait exactement c'est quoi. Y'ont été
donnés. Y'a eu des découvertes, etcétera.
Moi, je m'objecte formellement à ce qu'on
alle chercher autre chose ailleurs puis qu'on
puisse pas le tester puis qu'on puisse pas
savoir et je vois pas pourquoi on peut pas
utiliser exactement ce qu'on a déjà. Donc,
je m'objecte à utiliser...

10 LE TRIBUNAL : D'accord.

DENIS RANCOURT : ...l'Internet de cette
façon-là.

15 INTERPRETER: Yes. And we know that there
are changes. There are differences that are
brought because there are some things on the
web page, which are active, which might
change with time. There's a lot of things
like that and we can't know - why can we not
stick to the paper documents, which have been
20 submitted, which we know exactly what they
are. There have been discoveries. So, I
formally object that we go and seek other
information elsewhere that cannot be subject
to be tested and I can't see why we can't use
what we already have. So, I object to the
use of the Internet in this master [sic].

25 THE COURT: Okay. Mr. Dearden?

30 MR. DEARDEN: Your Honour, that objection is
a complete and utter waste of time and I
don't say that in hyperbole. We're going to
his website and he has a link to my letter.

You look at the second column, so just - the column that's above sting 8 in the - we're on the May - where are we here? We're on - yes, the May 18th blog.

THE COURT: Yes.

MR. DEARDEN: So, see above sting 8?

THE COURT: The one with your picture?

MR. DEARDEN: The one with my picture. So, he's got a paragraph after the indented quotes there. The new threat comes in the form of this letter dated May 16th, and I wanna show the jury that that's my letter. That's the letter that we're talking about. And Mr. Rancourt, if he's got a problem with that, it's his website and if something's there that's not supposed to be there, he can certainly explain it in evidence. I just can't believe that we would be wasting our time where he's disagreeing and I cannot produce that. Like it says this. That's the link, Your Honour, and he completely misleads you on the Supreme Court of Canada case. I argue - I was one of the counsel arguing in that case. Okay? It's called Crookes and Newton and the issue was whether if you just posted a link that that was a publication that you were the publisher of the defamatory content in the linked site. Okay? It doesn't - there's nothing in there that says that I can't do what I'm trying to do with this witness right now. So, you....

THE COURT: But what's in - maybe I - and

without deciding anything, the purpose of this is to show that he's referring to Tab 5 or is it....

MR. DEARDEN: The notice.

THE COURT: The Tab...

MR. DEARDEN: Yes, four.

THE COURT: ...4, when he puts in this - when he refers to this letter, he's talking about this letter. Is that it?

MR. DEARDEN: Yeah. And it's his site. So, if something happens to be different at the - this, 'cause you just instructed the jury on hearsay about my letter. I wanna make sure there's no doubt in your mind that that letter, his - that they're looking at Tab 4, he's got a link to it on his site, and he got it. And then he said all kinds of interesting things about it.

THE COURT: Okay.

MR. DEARDEN: So, there should be no issue.

THE COURT: I tend to agree but...

LE TRIBUNAL : Monsieur Rancourt...

DENIS RANCOURT : Oui.

LE TRIBUNAL : ...si c'est tout simplement pour indiquer que ça - vous avez toute l'opportunité de réfuter ça, vous, que ce disque-là, c'était pas la lettre à l'onglet 4. Je vois pas de quelle façon...

INTERPRETER: Mr. Rancourt, if this is simply to indicate, you have all the opportunity to refute this that this item is not the letter at Tab 4. I can't see how....

DENIS RANCOURT : Donc...

LE TRIBUNAL : Il faudrait...

DENIS RANCOURT : Aujourd'hui...

LE TRIBUNAL : Oui?

DENIS RANCOURT : ...si on va sur le *link* et on voit ce qui est là, c'est peut-être pas ce qui était là hier, avant-hier ou y'a un an. Je ne sais pas. Ça - je, je ne...

INTERPRETER: If we would be today, if we hit on this link and we see what it is, it may not be what was there yesterday, the day before or a year ago.

LE TRIBUNAL : Bien, on pourrait...

DENIS RANCOURT : Puis je le sais pas d'avance qu'est-ce qui va sortir là. Je m'en souviens pas nécessairement sur quel site ç'avait été mis, qu'est-ce que c'est? Je ne sais pas nécessairement d'avance alors qu'on a tous les documents qui ont été découverts, mais...

INTERPRETER: But I don't know what's going to show up. I don't recall on which site it was. I don't recall, I don't know ahead of time whereas we have all the documents that were submitted to discovery.

LE TRIBUNAL : Mais le but c'est indiqué que dans votre blogue, vous référez à cette lettre-là. Je veux dire, on pourrait, en théorie, dire, oui, je suis d'accord que c'est cette lettre-là que j'avais mis en ligne là. Je veux dire c'est...

DENIS RANCOURT : Mm-hmm.

LE TRIBUNAL : ...mais quel - je veux dire, il me semble qu'on coupe les cheveux en quatre là.

INTERPRETER: Yes, I agreed that this is the letter that I posted online but I mean, it seems to me that we're splitting hairs here. But the item here is that in your blog, we refer to this letter. In theory, we should be....

DENIS RANCOURT : Donc, donc, je propose une, une solution, Monsieur le juge. Ça serait de dire que on ne vas utiliser l'Internet que pour cette raison uniquement, c'est-à-dire de montrer que tels liens, aujourd'hui, corresponds à tels documents aujourd'hui quand on ouvre le lien. Si on est d'accord que c'est le seul but d'utiliser l'Internet...

INTERPRETER: Therefore, I propose a solution, Your Honour, is that, that we will only use the Internet only for this purpose, to show that this link today corresponds to that documentation today, when we open the - today, when we open the document. If we can agree that this is the only purpose...

LE TRIBUNAL : Que c'était, par exemple, cette lettre-là en février, le 8 - mai le 8, 18, 2000...

INTERPRETER: ...is that this was the link that this letter shows that this was the

letter on the 18th or whatever.

DENIS RANCOURT : La seule chose que ça va montrer c'est que aujourd'hui, quand on frappe ce lien, on voit ce qu'on voit à l'écran. Ça ne montrera pas que c'est ça qui avait là avant. Ça ne sera pas en preuve. Il faut qu'il me pose la question à moi si il veut savoir ça. En autre mot, je peux ...

INTERPRETER: The only thing it will say is that we'll set that this is what we see at the screen. It will not show that this is what we have at this time before. You'll have to ask me the question if he wants to know that. In other words, I can...

MR. DEARDEN: It's ludicrous.

DENIS RANCOURT : Je veux dire, il, il peut dire voilà ce qui est là aujourd'hui. Moi, moi, je suis - moi, je suis d'accord avec ça, mais là, on entre dans un territoire où ce qu'il va démontrer dans les faits, c'est que aujourd'hui, quand on clique sur le lien, voilà ce qui apparaît. Oui. Moi, je le sais pas ce que ça va être. Moi - y'a souvent des fois où je vais à mes propres liens et c'est des choses différentes qui sont là et je suis obligé d'appeler quelqu'un pour les faire corriger et des choses comme ça. Donc, c'est la - c'est juste - y'a...

INTERPRETER: ...he could say this is what's on the website today. I agree with that but we're moving here in an area where what he's

trying to show is that today, when we click on the link, this is what appears but I don't know what it's going to be. To me, I go to my own link and I hear - I see different things. So, I have to call on someone to make corrections and things of that nature. So, there...

LE TRIBUNAL : Bien, je vais vous permettre à chacun de - qu'on exclu le jury puis vous dites c'est pas ça qui est là - mais faire quoi que ce soit, mais vraiment, c'est - je ne vois pas là - je ne vois pas comment on peut empêcher monsieur Dearden de démontrer que le 18 mai, vous avez mis sa ligne - sa lettre en ligne.

INTERPRETER: Well, I will allow to each of you to exclude the jury and say and debate what you say this is not what's on the website. Frankly, I can't see how we can prevent Mr. Dearden in demonstrating that on the 18th of May, you posted your - his letter online.

DENIS RANCOURT : Ça va pas démontrer que c'était le 18 mai. Ça va démontrer que le lien actuel aujourd'hui mène à ce document-là.

INTERPRETER: It will not show the 18th of May. It will show that the link today brings to that document...

LE TRIBUNAL : Okay. Bon, ça...

DENIS RANCOURT : C'est tout ce que ça va

démontrer.

LE TRIBUNAL : Puis là, ça deviendrait une question d'argument plus tard. D'accord.

INTERPRETER: And then it becomes a matter for further arguments.

DENIS RANCOURT : Et est-ce que...

INTERPRETER: Yes.

DENIS RANCOURT : ...on pourrait être d'accord que c'est la seule raison que l'Internet va être utilisé?

INTERPRETER: And can we agree that that's the only use that we will make of the Internet?

LE TRIBUNAL : Non. On verra au fur et à mesure puis vous pourrez vous objecter sur les d'autres usages possibles. Là, je verrai. Tout ce que je dis c'est que dans ce cas ici, votre objection, il me semble, est pas substantive vraiment. Je comprends votre point technique que vous dites qu'en théorie, si y'a des années qui ont passées, il peut avoir des changements, mais je veux dire, y'est - il faut le regarder pour l'usage qu'on veut en faire.

INTERPRETER: No. We will see as we go along and you can then be able to object as to possible uses and then I'll see. All I'm saying now is that at this time, your objection is not substantive. I understand the technical point that you're raising when you're saying in theory. If years have gone by, there may be changes. But one has to

look as to the use that we want to make of it.

DENIS RANCOURT : Je ne veux pas que mon manque d'objection implique que ce document était là à la date que monsieur Dearden dit. C'est tout.

INTERPRETER: I do not wish to imply that my lack of objections implies that that document was there that time.

LE TRIBUNAL : Okay. Donc, on peut - on va...

THE COURT: Go ahead, Mr. Dearden and it'll be a question of, I suppose argument - if he stands up and said it's no more there, then I suppose - it's not what it - what was there. By that, I can't prevent him from saying that but that's....

MR. DEARDEN: It's so ludicrous, Your Honour, it's there. Like we just hit the link and it's there. And he knows it.

THE COURT: Yeah.

MR. DEARDEN: So, let's get - can you get the jury back, Your Honour? Yeah.

THE COURT: Because the jury's not a fool. It'll be - if it's the same letter...

DENIS RANCOURT : Mm-hmm.

THE COURT: ...word for word, I mean....

DENIS RANCOURT : Je, je...

INTERPRETER: I...

DENIS RANCOURT : ...ne sais pas...

THE COURT: And it's dated May 16th, 2011.

Let's, you know, let's not....

DENIS RANCOURT : Non, mais c'est...

LE TRIBUNAL : L'idée, c'est de ne pas se
s'embourber dans des arguments qui sont - qui
n'aide pas votre cause, qui n'aide pas le
processus, qui n'aide pas le jury là.

INTERPRETER: But the idea is not to get
bogged down in arguments that are - that's a
- that don't help your case. It doesn't help
- the process doesn't help the jury.

DENIS RANCOURT : Mon but c'est de prévenir
ce qui va arriver si monsieur Dearden fait ça
souvent. Je voulais savoir techniquement.
Je voulais vous mettre au courant de ce
problème et je voulais savoir, à l'avenir,
comment on va faire. C'est tout.

INTERPRETER: My goal is to prevent what's
gonna happen if Mr. Dearden does this often.
I wanted to know technically. I wanted you
to be aware of the problem and I wanted to
know in the future, how we were going to deal
with this.

LE TRIBUNAL : Merci.

INTERPRETER: Thank you.

THE COURT: Okay. Let's call in...

MR. DEARDEN: Well, just for the record, Your
Honour, there is no problem.

THE COURT: Let's call the jury. All right.

GREFFIER DE LA COUR : On peut apporter le
jury, Votre Honneur?

LE TRIBUNAL : Oui, s'il vous plaît.

INTERPRETER: Yes, please.

MR. DEARDEN: Do you have the link Ms.

Semenova?

MS. SEMENOVA: Yeah, that's it.

MR. DEARDEN: That's it and then...

MS. SEMENOVA: Yeah.

MR. DEARDEN: ...(inaudible) to ask the question so everybody's gonna be...

MS. SEMENOVA: Yeah. You might as well.

MR. DEARDEN: Yeah. So, just wait until I give you the cue.

MS. SEMENOVA: Yeah.

CLERK REGISTRAR: All rise.

...JURY ENTERS (2:40 p.m.)

CLERK REGISTRAR: All members of the jury are present, Your Honour. You may be seated.

LE TRIBUNAL : Merci.

INTERPRETER: Thank you.

THE COURT: Let's proceed.

MR. DEARDEN: Q. So, Professor St. Lewis, what we were discussing before we asked the jury to be excused is what did Mr. Rancourt do in response to the notice of May 16, 2011 and you said, he published the May 18th, 2011 U of O Watch article and I have up the article that he published and I'd ask Ms. Semenova to hit the link where we see in the column that has the sting number 8 in it, so - or if you want to go from the top of that column, after the bullet points, you see, "This new threat comes in the form of this letter, dated May 16, 2011." So, can you hit that link, please? And what is that, Professor St. Lewis, that link?

A. That's the May 16th, 2011 letter.

Q. Okay. And he says in his article, "This letter was signed by Richard G. Dearden of the Gowlings law firm. Gowlings has close ties with U of O. One of its founding members was the Chancellor at the university in 1990's..." et cetera, et cetera. So, that letter was obviously received by Mr. Rancourt because he's reproduced it in a link. In this article of May 18th, what did he do in response now to my Notice of Libel of May 16, 2011?

A. Well, he didn't, he didn't take it down and he actually - I'm just trying to get a grip on myself here. After the May 18th....

Q. Okay, well, actually that might...

A. I'm confused what...

Q. What did you do...

A. Oh.

Q. ...in response?

A. Oh, I was just gonna...

Q. What you do in response?

A. ...say, I was getting....

THE COURT: Yeah, you said he, yeah.

A. Yeah, sorry. Okay.

MR. DEARDEN: Q. Oh, that was me.

A. Okay.

Q. Yeah, so he put...

A. We wrote...

Q. ...the article...

A. ...we wrote to Mr. Rancourt and we asked him - there was a letter of May 20th, which was sent to Mr. Rancourt.

Q. And that's Tab 5 of Volume 1?

A. Yes.

Q. So, and that...

A. And...

Q. Yes, I'm sorry.

5 A. And in that letter, we actually stated to him, that not only were - was there a problem related to the first blog but we, we set out another set of defamatory statements that he made in that letter.

10 Q. And you're looking at the May 20, 2011. So, why don't...

A. Yes, I'm looking at...

Q. ...you read what part you're referring to?

15 A. I'm referring to paragraph 2. "Your additional defamatory and offensive statements in your U of O Watch blog include, I did not say that Professor St. Lewis acted like a house negro because she is black. I said it because it was reasonable to conclude in the matter that she acted like a house negro and because it is
20 my reasoned opinion that she acted like a house negro." And then he went on to say that I was attempting to discredit a 2008 student union report that alerted to the university to its now more than evident problem of
25 systemic racism and then he had a link in there that went to his other blog post on that issue.

Q. Okay. And what did the defendant do in response so this Notice of Libel, May 20, 2011?

30 A. He, he didn't, he didn't take it down. He, he didn't it down. He didn't apologize. He didn't retract. He actually proceeded to blog, to do more blogging.

Q. How many more? Approximately how many...

A. In, in terms of the...

Q. ...more in between...

A. ...U of....

Q. ...then and now?

A. In terms of the universe - the U of O

Watch site, 68. In terms, he has another website that he also controls on this activist teacher site. There's seven there.

Q. About what? Seven....

A. Seven - these are seven - all of these blogs are either reiterating his entitlement to have called me a house negro or they're reporting on aspects of the case but the, the ones - the numbers I'm attaching to are the ones where he's talking about me or the lawsuit or the original statement and his view of what I did on the report. They're, they're all specific. I'm, I'm saying there's 68 specific to me on this one and there's seven on the other post and then he, he's also done other kinds of interviews about the case in other context; on - online, independent radio shows, Tweeting, Facebook, messaging, encouraging people to attend things and also with commenting, encouraging people to comment and then there are mainstream media that he has done, including doing a number of interviews with mainstream and student media. The - some of the media, I would say, he, he has on more than one occasion, solicited the media interviews, sending out mass emails to ask people to report on this.

DENIS RANCOURT : Monsieur le juge, une objection technique. Je pense que c'est du hearsay quand il - quand il est dit il a fait

ceci. En faite, la témoin veut dire j'ai vu un article...

LE TRIBUNAL : Non.

DENIS RANCOURT : ...que je pense...

INTERPRETER: Your Honour, I object, on a technical matter. I think this is hearsay. When it said he did this, in fact, the witness wants to say I saw an article that I thought...

THE COURT: We'll ask...

LE TRIBUNAL : On va demander au jury de s'excuser.... On va excuser le jury.

INTERPRETER: We'll ask the jury to be excused then.

A. Okay, sorry.

...JURY RETIRES (2:47 p.m.)

CLERK REGISTRAR: You can have a seat.

DENIS RANCOURT : Je me trompe peut-être, mais y'a des, des énoncés à l'emporte-pièce où on dit il a fait 68 articles. Il a tweeté des affaires. Il a ceci, il a cela. La témoin ne sait pas que j'ai fait ces choses-là. Elle, elle, elle voit des choses à l'Internet. Elle - y'a, y'a pas en évidence que c'est moi qui a fait ces choses-là. Elle - donc, c'est du *hearsay*, je pense.

INTERPRETER: Maybe I'm mistaken but there are - both they said statements where it said, he made 68 articles. He tweeted this, he did this, he did that. The witness doesn't know I did those things. She sees

things on the Internet. There's not proof that I did that. It's not evidence. So, I think that's hearsay.

5 LE TRIBUNAL : Okay. Peut-être que c'était mal formulé là. Si c'était - elle a commencé par dire que c'était - voici ce que j'ai vu. Y'avait - il n'avait sur son *U of O Watch* puis y'en avait sur un autre *blog*. Okay. Et vous, vous dites - et sur ces choses-là - sur 10 le *U of O Watch*, j'ai vu - j'en ai vu 68 ou j'en ai vu - bon, un paquet qui dis ça puis sur un autre - puis là, votre objection c'est de dire, mais je sais pas si c'est moi qui les a mis là.

15 INTERPRETER: Okay. Maybe it was not well expressed. If it was - she started by saying that it was here, what I saw. Here's what I saw. There was some on his *U of O Watch* and there were some on another blog and you're 20 saying and on those things, on the *U of O Watch*, I saw 68 or I saw a whole bunch of them that say that, and on another. Now, your objection is to say but I don't know if I'm the one who put them there.

25 DENIS RANCOURT : Bien, parce qu'elle mentionne beaucoup de choses comme ça en l'emporte-pièce, Twitter, Facebook puis juste de façon là globale, il a fait ceci. Il a fait des interviews sans dire lesquels. Il a fait des cis, il a fait des ças. Il a - sans 30 qu'on sache de quoi il s'agit; sans qu'on

puisse...

INTERPRETER: Well, she mentions a whole
gambit of things, so just like that,
Facebook, Twitter. You know, boldly saying
it's statement like that. He did this, he
did that, without knowing what is being
talked about. You know...

LE TRIBUNAL : Mm-hmm.

DENIS RANCOURT : Et donc...

THE COURT: Mr. Dearden?

MR. DEARDEN: Your Honour...

INTERPRETER: Mr. Dearden.

MR. DEARDEN: ...once again and I'm getting
very concerned about the pattern of delay
here. Mr. Rancourt knows full well and he
doesn't take issue with the fact that he did
68 blogs about Professor St. Lewis on his U
of O Watch. He doesn't take issue with that.
She's observing and we also are gonna come to
them, Your Honour, they're in the volumes.
Okay? So...

THE COURT: Well, listen...

MR. DEARDEN: ...she's actually gonna come to
them.

THE COURT: ...I'm gonna cut you short but I
think that's what you should do. Obviously,
what he's saying is that - if it's only an
introduction to that, but I think it's, you
know, I tend to agree that if it is - if it
stay - if it stayed in this format, it's
somewhat unfair and in fact, it doesn't tell

anything very specific to the jury. I think you have to be more specific. If you're alleging that he did this, he printed this or that on the issue of maliciousness, you should point to specific things.

MR. DEARDEN: We're going to, Your Honour, but in my respectful submission, Professor St. Lewis, at this stage, in terms of the question being, what did Mr. Rancourt do in response to the second Notice of Libel, can say that he didn't take it down, didn't apologize, didn't retract and on top of that, he went on this campaign of Tweeting, Facebook messaging, the other - like she said it and...

THE COURT: But if she had stopped there, that'd be fine but I mean, in other words, that's his - she tells what his reaction his. He continued blogging, he continued - and didn't take it down, et cetera but when she tries to characterize then maybe we'll - we should get to the more - we have our answer as to what the - that's what I'm saying.

MR. DEARDEN: Okay.

THE COURT: So, again, I mean, I'm going to allow the objection on that base. I think we should now move to the - from the general to the specific.

DENIS RANCOURT : Et aussi, j'ai une question d'information purement. Est-ce que pour - en général, pas par rapport au professeure St.

Lewis, mais en général, quand y'a un témoin dans la cabine, est-ce que le témoin a le droit de s'adresser au jury directement en, en regardant le jury?

INTERPRETER: And also I have a question. Purely for information sake, in a general way, not regarding Professor St. Lewis. Usually when somebody is in the witness box, does the witness have a right to just look at the jury members when they're testifying?

LE TRIBUNAL : Bien, oui.

INTERPRETER: Well, yes.

DENIS RANCOURT : Okay, c'est comme ça que ça se fait?

INTERPRETER: That's how it's done?

LE TRIBUNAL : Bien, oui.

INTERPRETER: Yes, of course.

DENIS RANCOURT : Okay, moi je le savais pas.

INTERPRETER: Well, I didn't know that.

LE TRIBUNAL : Bien, oui. Le jury est intéressé à regarder dans les yeux le témoin pour voir si le témoin dit la vérité, oui.

INTERPRETER: The jury likes to see the witness face-to-face to see if they're speaking the truth.

DENIS RANCOURT : Merci. Je, je, j'étais pas au courant comment ça marche.

INTERPRETER: Oh, thank you. I didn't know how it worked.

LE TRIBUNAL : Parce que c'est pas les questions qui sont - c'est jamais - oubliez jamais ça quand vous allez poser des

questions vous même en contre-interrogatoire. C'est jamais les questions qui forment - qui est la preuve. C'est jamais la question. Le jury est pas intéressé dans la question. Le jury est intéressé dans la réponse. Si on accepte - si le témoin accepte et la suggestion qui est dans la question, oui, la question devient la preuve indirectement, mais c'est ce que le témoin dit qui est la preuve. Le...

INTERPRETER: It's not the questions. It's never. Never forget when you're asking questions yourself of Professor St. Lewis, it's never the questions that become the evidence, the testimony. It's never the questions. The jury is not interested in the question. The jury is interested in the answer. If the witness accepts the suggestion in the question, yes, then the question becomes evidence indirectly but it's what the witness says that becomes evidence.

DENIS RANCOURT : Et ça s'applique...

LE TRIBUNAL : Et la question - la personne qui questionne peut dire toute sorte de faits dans sa question, mais ce qui - ce n'est pas de la preuve ça. C'est ce qui est soit accepté ou ce qui sort de la bouche du témoin.

INTERPRETER: The person asking questions can say all sorts of facts within the question, but that's not evidence. It's what is accepted or what - by the witness or what is

said.

DENIS RANCOURT : Dans...

LE TRIBUNAL : D'accord?

DENIS RANCOURT : ...mon cas, c'est moi qui questionne et qui répond, c'est ça? On verra.

INTERPRETER: So, when I'm asking and answering, is that what you're saying?

LE TRIBUNAL : Peut-être que vous devriez considérer sérieusement vous engager quelqu'un pour vous questionner et vous répondre, mais de toute façon, allons - ça, c'est un autre problème.

INTERPRETER: Well, maybe you should consider seriously to hire someone to put you through the examination. Anyway.

THE COURT: Okay, bring back the jury.

CLERK REGISTRAR: All rise.

...JURY ENTERS (2:52 p.m.)

CLERK REGISTRAR: All members of the jury are present, Your Honour. You may be seated.

THE COURT: Let's proceed.

MR. DEARDEN: Thank you, Your Honour.

Q. So, Professor St. Lewis, Exhibit 3, which is the February 11, 2011, "Did Professor Joanne St. Lewis Act as Allan Rock's house negro" article. Prior to the publication of this Exhibit 3, what opportunity did Mr. Rancourt give you to defend yourself?

A. Prior to the publication? None.

Q. None? And same question for Exhibit 4, which is the May 18, 2011 article.

A. I think...

Q. What opportunity did Mr. Rancourt give you to defend yourself about that one?

A. No opportunity. I have them as two and three, not three and four, in my book. Okay.

5

THE COURT: She - yes, it's....

A. Yeah.

THE COURT: CV was - is Tab 1.

A. One.

10

MR. DEARDEN: Well, now I thought we put Volume 1 as Exhibit 1 and Volume 2 as Exhibit 2.

THE COURT: Yes.

A. Okay.

MR. DEARDEN: And then the article...

15

A. Oh, I just don't have the - I'm at tabs. I'm, I'm working with tabs.

THE COURT: Exhibit 1, Tab 2 is the...

A. Yeah, it's just...

THE COURT: ...first...

20

A. ...the....

THE COURT: ...U of Watch [sic]....

A. I didn't have these.

MR. DEARDEN: No, I know that...

A. I had....

25

MR. DEARDEN: ...but we're...

DENIS RANCOURT : Monsieur le juge...

INTERPRETER: Your Honour...

THE COURT: You're looking at these here?

30

MR. DEARDEN: Yeah, I thought...

THE COURT: Okay.

MR. DEARDEN: ...I entered Exhibit 3...

THE COURT: Okay.

MR. DEARDEN: ...as the February 11...

THE COURT: Yeah.

MR. DEARDEN: ...like the marked-up one and Exhibit 4....

A. Which you had, but I didn't have them. I only had the book and so I was looking...

Q. Right.

A. ...at Tabs 2 and 3.

THE COURT: And you were look...

A. That's why I was confused. So, that's all. My apologies.

MR. DEARDEN: Okay.

DENIS RANCOURT : Je - moi, j'avais signalé que le tout le livre n'est pas un exhibit. Sinon, ça n'a pas de sens. On avait dit que le livre était là pour des fins pratiques et que les exhibits allaient être entrées une à la fois. Donc...

INTERPRETER: I had underlined that the whole document is not an exhibit. Otherwise, it makes it no sense. We had said that we're using the bound book for practical reasons.

LE TRIBUNAL : Oui, bien ils vont devenir - le livre, si jamais on identifie tous les documents, va devenir de la preuve.

INTERPRETER: But each document would be introduced individually but if we do identify all the documents, then the book will become an exhibit...

DENIS RANCOURT : Oui, mais il l'est pas en

ce moment.

INTERPRETER: But we haven't done that yet.

LE TRIBUNAL : Non, non, pas encore.

DENIS RANCOURT : Donc, on devait nommer
l'onglet un, l'exhibit un, l'onglet deux,
l'exhibit deux, etcétera.

INTERPRETER: So, we have to go tab by tab,
right?

MR. DEARDEN: That's what we did.

DENIS RANCOURT : Ça serait beaucoup plus
simple.

INTERPRETER: It's much simpler.

THE COURT: No.

MR. DEARDEN: We entered both volumes as
Exhibit 1 and 2.

THE COURT: One and two and they will only
contain - we will remove whatever in Exhibit
1 is not a part of the evidence and we'll
remove from Exhibit 2 everything that is not
part of the evidence. Okay?

LE TRIBUNAL : Bon.

A. I just didn't have these, that's all.

MR. DEARDEN: Q. Okay. I'm starting to
think I've got to regroup myself here.

A. No.

Q. Okay, exhibit - let's start over. Okay?
Exhibit 3 is the highlighted and numbered February 11,
2011 article.

A. Mine has no highlighting. Is that
important?

MR. DEARDEN: Ms. Semenova, do you want to
explain that, please?

MS. SEMENOVA: Yeah, (inaudible.)

A. Yeah.

MS. SEMENOVA: (Inaudible.)

THE COURT: Okay, is that - that one's highlighted, the...

MR. DEARDEN: These one's are highlighted.

A. Yeah.

THE COURT: All right, so we'll show...

A. Yeah, I, I really do need to...

THE COURT: Yeah, the witness'....

A. ...see the.... Yes.

THE COURT: ...possibly you should make sure the witnesses are shown the actual exhibits.

A. Yeah.

THE COURT: All right.

A. Thank you.

MR. DEARDEN: Q. Okay. So, for Exhibit 3, the...

DENIS RANCOURT : Lequel?

A. Yes.

MR. DEARDEN: Q. ...February 11, 2011 article...

MR. RANCOURT: I didn't...

MR. DEARDEN: Q. ...what opportunity did Mr. Rancourt give you to defend yourself about that, before it was published?

A. None.

Q. And the same question for Exhibit 4, which is the May 18, 2011 article. What opportunity did Mr. Rancourt give you to defend yourself before he published that?

A. None.

Q. Okay. And as of today, has the defendant apologized to you for any of the statements that he's made in his two U of O Watch articles in issue in this action?

5 A. No, the, the defendant, Mr. Rancourt, has not apologized. He has not retracted any of these statements. The only thing that he has done and that was a year or so after it was originally posted, is he changed a single word. He was wrong when he thought I lacked
10 tenure and he changed untenured to tenure.

Q. Which article are you referring to?

A. Just - I think the first - where have I seen this? This thing, I'm having.... I'm having trouble finding it. I know he referred to it.

15 Q. Exhibit 3?

A. Yes. Yeah, I'm just - am I on Exhibit 3? Yes, just a second, sorry. It's just the print is small. (Inaudible.)

Q. Sting 5.

20 A. Yeah. I'm just - he - this one, oh, because what I was looking for - my apologies, I was actually looking for the one with the correction, so I was looking at the bottom for the correction, the non-tenure to tenure but sting 5, he says that I'm non-tenured. This
25 is what he said in originally in February 2011. What he changed subsequently, about a year after, is the word non-tenured, became tenured. And then in very tiny print he put - basically suggesting it's an editorial change. That's not - he didn't say I was wrong for this reason. I
30 said it for this reason. There was no retraction, explanation, apology, context for the change and so it's,

it's not an apology. He hasn't apologized, he hasn't retracted. He's actually been quite consistent in, in, in saying that I am the house negro of the president, Allan Rock. He has been consistent in making statements that I'm basically an unprofessional lawyer, that I breached my Code of Ethics, 'cause that's what it is when you start talking about me having, you know, participated in some kind of statements that are false about whether I'm independent or not. When you start saying that I'm - in other words, saying one thing out of one side of my mouth and then doing something differently and being willing to hold myself out in a false way. That goes to, to me, as a professional, in a very fundamental way. And he's never apologized for those statements. He's never qualified those statements.

DENIS RANCOURT: Pardon, objection. Je m'excuse, mais je dois objecter. C'est une question importante et ça risque de se reproduire plusieurs fois donc je veux le régler tout de suite.

INTERPRETER: I object. I'm sorry. But I have to object. It's an important question and there's a possibility that it will come up more so I have to object.

LE TRIBUNAL : Est-ce que vous objectez à la réponse?

INTERPRETER: Do you object to the answer?

DENIS RANCOURT : Oui. Oui, à la nature.

INTERPRETER: Yes. To the nature.

LE TRIBUNAL : J'anticipe...

DENIS RANCOURT : À la, à la...

LE TRIBUNAL : Okay, on va demander au jury de se retirer, s'il vous plaît.

INTERPRETER: We're going to ask the jury to be excused.

CLERK REGISTRAR: All rise.

...JURY RETIRES (3:00 p.m.)

CLERK REGISTRAR: You may be seated.

LE TRIBUNAL : C'est mieux d'être bon parce que je pense je le sais c'est quoi votre objection.

INTERPRETER: This better be good because I think I know what you're objecting to.

DENIS RANCOURT : Oui, qu'est-ce que - qu'est-ce que c'est?

INTERPRETER: Okay, what is it?

LE TRIBUNAL : Allez-y.

INTERPRETER: No, go ahead.

DENIS RANCOURT : Mon objection, c'est que dans une cause en diffamation, y'a des énoncés précis dont on se plaint et la témoin vient de dire que j'ai dit « *I am the house negro of Allan Rock.* » Elle a dit que j'ai dit ça alors que quand on prend l'énoncé tel quel, j'ai dit « *The ATI documents suggest that so and so acted like...* », ce qui est très différent de dire - que de dire « *I am.* » C'est elle est.

INTERPRETER: Here's my objection. In a libel suit, there are precise statements that we're complaining about. The witness just

5
said, I am the house negro of Allan Rock.
She says I said I said that but when you take
the statement per se, I said the ATI
documents suggest that so and so acted like,
which is very different from saying I am.

10
LE TRIBUNAL : Y'a pas de magie là-dedans là.
Ça là, c'est des objections. Vous n'aimez
pas sa réponse, vous pourrez la contre-
interroger.

INTERPRETER: There's no magic in that. Now,
you know what, these are objects.... You
don't like what I am saying? You'll be able
to cross-examine her.

DENIS RANCOURT : Mm-hmm.

15
LE TRIBUNAL : Elle témoigne sur sa mémoire
de ce qu'elle a vu, de ce qu'elle a entendu.
Elle ne fait pas un argument. Elle témoigne.
Elle témoigne sur l'impact que ça l'a eu sur
elle. Elle témoigne sur toutes ces choses-
là, comment qu'elle a perçu, etcétera. C'est
pas parce que vous aimez pas sa réponse.

20
Vous la contre-interrogez si vous êtes pas
d'accord et vous tenterez de démontrer que sa
réponse est pas précise ou quoi que ce soit,
mais vous ne pouvez pas vous objecter
constamment sur cette base-là.

25
INTERPRETER: She's testifying. She's
testifying, based on her memory of what she
saw, what she heard. She's not bringing an
argument. She's witnessing here, testifying.
30
She - witness - she's a witness on how she
lived it, how she perceived it. It's not

because you don't like her answer. Cross-examine her if you don't like her answer. If you want to show that her answer is not precise or whatever, you cannot constantly object based on that.

DENIS RANCOURT : Donc, je - j'avais, j'avais compris quand diffamation, il fallait être précis sur les énoncés. C'est tout.

INTERPRETER: Well, I had understood that in a libel case [sic] you had to be precise on the statements. That's it.

LE TRIBUNAL : Bien ça, c'est une question pour le jury à la fin. C'est pas une question qu'on va - à ce moment ici.

INTERPRETER: Well, that's a question at the end for the jury to deal with. It's not a question to deal with now.

DENIS RANCOURT : Donc, je me suis trompé. Je m'excuse, maintes fois.

INTERPRETER: So, I made a mistake, I'm sorry.

LE TRIBUNAL : Là, là, vous allez mettre le jury contre vous là. Vous pouvez pas savoir. Faites des objections de substance qui sont importants. Essayez pas de trouver - vous cherchez - vous êtes en train constamment de trouver - vous pensez que y'a quelque chose à quelque part là qui vient pour vous saisir. Vous êtes pratique - et c'est pas - y'a pas de trucs là-dedans là. D'accord.

Rappelons.... Bien, on va prendre une pause de 15 minutes.

5 INTERPRETER: You know what now? You're going to bring the jury in such a position that they're going to be against you, okay? Make an objection on something that's substantial. You're constantly trying to find - to think that there's something somewhere that's coming here to just go against you. You practically - there's not a trick in here against you. Now okay, let's take a break now, 15 minutes.

10 CLERK REGISTRAR: Court is in recess for 15 minutes.

(3:03 p.m.)

15 R E C E S S

U P O N R E S U M I N G:

(3:16 p.m.)

20 THE COURT: All right.

CLERK REGISTRAR: Court's reconvened. You may be seated.

25 LE TRIBUNAL : Peut-être je peux vous suggérez, monsieur Rancourt, si vous avez une objection vraiment, vous devriez la faire à la question et pas au témoignage. Si vous comprenez la différence là.

30 INTERPRETER: What do you suggest, Mr. Rancourt? If you have an objection, you should apply to the question and not to the testimony. I hope you understand the difference.

DENIS RANCOURT : Je comprends la différence. J'ai - la témoin était dans le milieu de, de

5 parler puis je voulais - j'osais pas
l'interrompre, mais je voulais clarifier le
principe pour comment ça marche. Je trouvais
ça que y'avait quelque chose de pas correct,
mais je voulais le vérifier avec vous, mais
en même temps, j'osais pas interrompre une
fois que c'était lancé. C'est - j'étais un
peu pris entre deux, entre deux monde.

10 INTERPRETER: I understand the difference.
The witness was in the process of testifying.
I didn't want to interrupt her but I wanted
to clarify the principle, how things work. I
thought there was something that was not
quite right. I wanted to check with you but
15 at the same time, I did not want to interrupt
while this was going on.

LE TRIBUNAL : Mais ce que je veux dire,
c'est qu'on objecte pas. C'est extrêmement
rare qu'on objecte au témoignage. On objecte
20 à la question qui veut faire dire quelque
chose ou qui amène une telle réponse. Le
témoignage lui-même, c'est le témoignage du
témoin. C'est - les objections concernant -
ou les clarifications ou les arguments sur la
25 valeur du témoignage, bien, ça vient plus
tard ça.

30 INTERPRETER: What I need to say is, would
you not object, it's extremely rare that we
object to - at the testimony. We object to
the question, which is intended to have
something to be stated or the - that would

bring such response but the testimony is the witnesses and objections regarding or the clarifications or arguments with regards to the value of testimony, that will follow later.

DENIS RANCOURT : Je comprends que j'ai fait une erreur très grave et que je devrais - si y'a quelque chose que le témoin dit avec lequel je suis pas d'accord, je peux lui demander quand je la contre-interroge et que je devrais pas m'objecter à sa réponse. Ça, c'est, c'est un nonsens légal. Je comprends ça maintenant, Monsieur le juge...

INTERPRETER: I understand I made an error, a serious error and I should - if something, some statement is made by the witness, which I don't agree, I'll ask her in cross-examination and I should not object to her answer. I appreciate that. It's an illegal [sic] nonsense. I appreciate.

LE TRIBUNAL : Parce que on va - si vous êtes pas d'accord puis que vous...

DENIS RANCOURT : Oui.

LE TRIBUNAL : ...deviez poser une question, vous allez vous objecter cent fois...

DENIS RANCOURT : Non.

LE TRIBUNAL : ...alors que vous allez avoir la chance de contre-interroger.

INTERPRETER: If we don't - if you not agree that the question should be asked, you'll be objecting a hundred times where - but you'll

have a chance to cross-examine.

DENIS RANCOURT : C'est la, la seule affaire
qui me - c'est parce que j'ai lu quand
diffamation, c'est l'énoncé précis est
central à tout et donc, ça, c'est - ça me
chicottait là. Je savais pas quoi faire avec
ça puis c'est pour ça...

INTERPRETER: Well, thus, what I've read is
in a libel matter, the main item, which is
central, and I was really bothered by this.

LE TRIBUNAL : Bien, c'est pour les arguments
ça.

INTERPRETER: That's for the arguments.

DENIS RANCOURT : Okay.

INTERPRETER: Very well, okay.

LE TRIBUNAL : Alors, faite venir le jury.

INTERPRETER: Bring in the jury.

DENIS RANCOURT : Merci.

INTERPRETER: Thank you.

MR. DEARDEN: So, Mr. Registrar, it'd be
five, six, seven on 2(a), (b), (c).

CLERK REGISTRAR: Perfect.

MR. DEARDEN: These are all the U of O Watch
articles. Your Honour, I'm going to put them
in now, in the seven activist teacher.

CLERK REGISTRAR: All rise.

...JURY ENTERS (3:19 p.m.)

CLERK REGISTRAR: All members of the jury are
present, Your Honour. You may be seated.

MR. DEARDEN: So, Your Honour, seeing as
we're back from a break, I thought I'd enter

5 some more exhibits. Volumes 2(a), 2(b) and 2(c) from the Trial Book of documents are the reproductions of the 68 U of O Watch articles that Professor St. Lewis referred to and the seven activist teacher articles that Professor St. Lewis referred to earlier. So, I thought would - seeing as we had a break here, enter these as Exhibit 5, 6, 7? So...

10 THE COURT: Are they all - so they are all copies of blogs on the U of O...

MR. DEARDEN: Yes, and...

THE COURT: ...Watch?

15 MR. DEARDEN: ...the ones that Professor St. Lewis specifically referred to when she was asked what did Mr. Rancourt do in response to the Notices of Libel and she said, well, he did write 68 blogs, more blogs on U of O Watch about her or the case and then seven on another website that he operates called 20 Activist Teacher and they've all been reproduced in these three volumes of the Trial Book of documents.

THE COURT: So, those are the ones she was - she referred in her answer previously?

25 MR. DEARDEN: Yes. So, I would ask that Volume 2(a) be Exhibit 5 and Volume 2(b) be Exhibit Number 6 and Volume 2(c) of the Trial Book of documents be Exhibit Number 7.

30 EXHIBIT NUMBER 5: Volume 2(a) - produced and marked.

EXHIBIT NUMBER 6: Volume 2(b) - produced and

marked.

EXHIBIT NUMBER 7: Volume 2(c) - produced and marked.

MR. DEARDEN: So, Your Honour has a copy.

Mr. Registrar, you have a copy? Mr.

Rancourt, do you have a copy?

DENIS RANCOURT : Oui, merci.

MR. DEARDEN: You do?

DENIS RANCOURT: Mm-hmm.

INTERPRETER: Yes, thank you.

MR. DEARDEN: And then Mr. Registrar, I'm gonna ask you to give Exhibit 5 to Professor St. Lewis, please. So, we're going to be looking at Exhibit 5, Your Honour, and members of the jury and Tab 2. Okay?

Q. So, Professor St. Lewis, before the break, you were talking about a correction that Mr. Rancourt did publish and Tab 2 contains the February 11th article that has that correction. So, can you just refer the jury to what you were speaking of? This time we have the document in front of us?

A. So, if you are on the second page of Tab 2 and you go down mid-way, just before the blocked in section, which shows indented, the ATI Records exposed dot, dot, dot. Just immediately before that, the first word in the second line of that paragraph is the change of the word untenured to tenured, that I was referring to earlier and then if you turn onto the next page, which has at the centre of the page the picture of Malcolm X and the Malcolm X video, and it says, more on the professional ethics and then immediately under that, in really tiny font is correction made on April 30, 2012, "non-tenured

was changed to tenured." And what I was saying is that there's no context for the reader - like I, I looked at that and I do not consider that an apology, an explanation or a retraction.

5 Q. Okay. And can we now go to Volume 1 of the Book of Exhibits? So, Exhibit 1, Volume 1.

A. Yes, I have that in front of me.

10 Q. I just want to make sure everybody does. And you earlier testified that you had tenure, were granted tenure in 2001. So, 10 years before this article was published by Mr. Rancourt?

A. Yes.

Q. And what is this letter that I'm looking at, at Tab 6?

15 A. This is the dean's formal confirmation that I have been granted tenure. The letter's dated October 3rd, 2001.

Q. Okay. And Professor St. Lewis, what involvement did you have in the termination of Mr. Rancourt's employment as a University of Ottawa professor?

20 A. None. None...

Q. And...

A. ...whatsoever.

25 Q. And what participation did you have in a labour grievance that was filed with respect to Mr. Rancourt's dismissal as a professor at the University of Ottawa?

30 A. I have no connection to him at all and none to the labour grievance or union matters that may have arisen for him. None at all.

Q. Okay. Now, switching topics, which is how you discovered that Mr. Rancourt had published Exhibit

Number 3, the February 11, 2011 article. How did you discover that?

A. I was Googling my name in quotes. I do that from to time. I like to have an idea of what my students are gonna see about me and so it's no specific time, I just put my name Joanne St. Lewis and in quotes and I see what comes up so I have a sense of what students and the public are seeing about me.

Q. Okay. Let's do that now.

MR. DEARDEN: Could we, Ms. Semenova, plug in Joanne St. Lewis?

A. In quotes not quotation marks.

Q. I can't see that.

MS. SEMENOVA: (Inaudible.) We lost connection. I found it.

MR. DEARDEN: Of course we lost connection. Houston, we have a problem.

MS. SEMENOVA: (Inaudible.)

MR. DEARDEN: Like you're not getting any Internet, Anastasia?

MS. SEMENOVA: (Inaudible.)

MR. DEARDEN: You're not getting Internet?

MS. SEMENOVA : It's connecting. I love technology.

MR. DEARDEN: Yeah, don't put it in quotes. Just put Joanne's name. I still can't read that.

MS. SEMENOVA: Yeah.

MR. DEARDEN: Okay.

Q. So, what.... Go ahead, Professor St. Lewis.

A. Oh, sorry. I could lean forward.

Q. So, you did a Google search of your name.
When did you do that? What date are we talking here?

A. In April. April - in April of 20-11.

5

Q. Do you recall a specific date?

A. I know that - I believe it was April 8th.

Somewhere...

Q. 2011?

A. Yeah.

10

Q. And you - so this what that we're looking
at on the screen right now? On your Google search. What
do we call that?

A. He - the search results. I mean these
search results are not identical to the ones on April 8th,
15 20-11 because things have happened in between that but one
of the things that is the same is that the third item, I
notice now that the tagline isn't the same as the tagline
I'm used - that I saw on that day because it actually did
not have the U of O Watch in capitals. So, the full tag
20 was there, "Did Professor Joanne St. Lewis Act as Allan
Rock's house negro?" That's what I saw on April 11...

Q. Okay. But read that...

A. ...20-11.

Q. ...this item in full.

25

A. And then it said, "Did Professor St.
Lewis Act as Allan Rock's house negro? February is Black
History Month in Canada and the - and the U.S. U of O
Watch believes..." and then that's all that's there.

Q. The date?

30

A. And the date is February 11, 20-11.

Q. And I hit the link and there it is. It's

still up today. So, we know Allan Rock is the president of the University of Ottawa.

A. Yes.

5 Q. Describe the impact on you, Professor St. Lewis. So, if - you Google search your name, first page comes up. One of the items you read is this, this article that refers to you as acting as a house negro. What was the impact on you when you discovered that search item?

10 A. I, I still remember it because it was a shock. It wasn't it was - I didn't expect anything like this so I searched. I looked at it. I remember being stunned by it and I didn't do anything immediately. I just kept staring at my screen. To be honest with you, that's all I did. I stared at the screen and I was
15 looking at this set of words saying that I was a house negro. That, that's how - that's how I saw it. Like it's a rhetorical sentence, did I act as Allan Rock's house negro? It's calling me a house negro and I remember I left the office. I went, I went immediately to look for
20 Bruce Feldthusen. He's, he's the dean. He's also a colleague and I went to look for Bruce. He wasn't in his office when I went right away.

Q. And who's Bruce?

A. I, I said he's the dean.

25 Q. Oh, sorry.

A. Yeah. And I then went to look - I, I needed just - it's kind of like someone else to say, like this is real. Like this is really happening. This is really on the screen. And I went looking. I know I
30 talked to John Currie. I'm, I'm just not sure whether I talked to him on that day or soon thereafter. That period

isn't...

Q. Who's John Currie.

A. John Currie is my colleague. He's a colleague and a friend in, in the faculty. He's actually one of my closest colleagues and friends and so I looked for him. And I, I really don't remember if I was - I spoke to him on that day. I just - because it's, it's kind of a blur in a sense of how I was so overwhelmed by the words and knowing that they were there and it'd come up as a Google search, that it sort of overwhelmed everything that was happening around me at that time.

Q. And what were your feelings and your concerns about that Google search item?

A. I don't know if I'd call them concerns. I know what my feelings were.

Q. Okay, feelings.

A. I know, I wondered how anybody could say that about me. I remember - I knew right away that it was a lie, 'cause I'm - that's not the kind of person that I am. But then it's the Internet and I thought about all these strangers, people who didn't know me who, who would never meet me, who would never have any experience of me. Just that's the only thing they're seeing. Like people don't, don't necessarily do any more than read a tagline and all I could see is me, my name, Joanne St. Lewis, attached to this word house negro. And right at that - like I felt powerless. Like I was kind of like, like what am I - what exactly am I supposed to do about this? The lawyer in me knew that it had to come down. It had - I had to get rid of it. I had to do something. That's the kind of personality I am. But the other part of me was like, it's on the Internet. It's there for everybody to

see. It's a lie and I can't do anything about this. So, I - it's - I have experienced different racism at different times in my life but this, this is the most sustained experience I've had. And the irony for me is I would argue it came at a point where I would've said I was most capable, an established lawyer. I was an established law professor of dealing with any range of things that could've come my way and yet, there was this term and I knew what it meant. I absolutely knew when I looked at those words what they meant. And I knew they couldn't stay there. But I also am a person who does understand the digital age and I, I knew that what had happened, I'd never come back from, in some ways. There was no - it's not going to be a reversal of time where suddenly it's not there. It's not cached. It's not somewhere. I - yeah, anyway....

Q. And physically, how did you feel when you read - when you discovered those - your first page of your Google search results has this item...

A. At...

Q. ...referring to you as acting as a house negro?

A. At, at first, when I read the words, as I said, I was just shocked. I was just looking at them. So, you know, it was just like I was still. Like I was really still in my seat. But it's like my heart started to pound. It's like you - I, I wasn't like anxious. It was just shocked and upset, would be a better way of putting it. Just shocked and upset. It's - I fled my office. Like that was the feeling I had. When I was looking for Bruce, and I was looking for someone, it's after I got over it. First, I'm shocked, looking at it

because I'm kind of thinking, maybe I read it wrong. Maybe it's gonna go away. It's not going away. It's still there. And I felt trapped in my office. And so I was looking for someone else. Like it's almost like I wanted some kind of confirmation. I don't know, but I, I, I just felt trapped. The - that night, at home, my stomach was churning. I didn't really know what I was gonna be doing about it. I was alone, my house. I didn't call anybody. Like what am I supposed to say? What am I really gonna say? It's like, it's just horrible. Like it, it was just this horrible, awful nightmarish thing that had happened to me. It's not that I didn't think anybody in my life would care. It's just that they would've felt exactly how I was feeling, powerless. Like what were we gonna be? Powerless together. So, I tried to - tried to think about what I was gonna do. I tried to sleep. Those...

Q. Did you?

A. No, not really. Not really. I - 'cause I, I - I'm the kind of person who tends to like to fix things and solve things. I certainly do that for other people. So, my first thing was sitting there with a piece of paper and kind of work out what was I gonna do, 'cause I got up. I wasn't sleeping. So, I thought, okay, I keep notepads by my bed. I don't know if other people do that but I keep pieces of paper so that I can write out what's agitating me but it only made me more agitated because the one thing I couldn't write out was what I was called. It was like, I - for the longest while couldn't say the words, even the title of the blog post, because that's not what I am. I consider it to be profoundly insulting. And I was not gonna say those words in referring to myself.

And, you know, over the - that was just the beginning of my having disrupted sleep and just being agitated. Just - I don't, I don't know how else to put it.

Q. Okay.

A. Agitated.

5 Q. And how often do you do Google searches on your name after April 11, 2011, when you discovered that Google search item?

A. It's really weird how - what's happened. Immediately afterwards, it was like in the next few days,
10 it was like I was obsessive. Like several times a day, because I would search, kind of thinking it would go away. So, I was searching, I'd see it. It'd come off, right? And, and say it's still there. It was, it was really - I'm not saying that it was productive behaviour, but I, I
15 was obsessive about it, because I kept looking to see if something was happening; if something was changing and in the space of the first couple of days of looking, it had been, I think it was like item four and I watched it pop up to item two. So, now I was even more agitated, 'cause
20 I couldn't - now, it was even more prominent if you were looking for me. So, right immediately after learning that I was a law professor at U of O, there I am, with my name attached to the word house negro. Like - so, by that time, it was like, which is two days later, I'm not really
25 wound. I'm really, really wound. When we come to now, Google searching for me is not - of my name, is afar from a pleasant thing. It's like my public personality, who I am, is completely swallowed up by either being linked with my name, linked to the word house negro or this defamation
30 action.

Q. Defamation.

A. So, eight years or more of other activities as a benchner, all the other things that were on my page immediately before I was called a house negro, those things are gone. It's like I'm a, a woman through this narrow filter; this narrow, narrow filter. That's me today, right? So, me today, the second item is - which would look to a stranger like, oh, this is a neutral - it says, four on four discussion. You think it's a neutral thing on the case. No, it's not. It's, it's a website created by one of Mr. Rancourt's partisan supporters who's sitting right behind him there, Mr. Joseph Hickey. So, you know, so they think, oh, look, there she is in common law. Here's this discussion of the case. Am I neutral? No. Then comes the, is she Allan Rock's house negro? Then you have a couple things on my site that are me. Like other normal people get, my LinkedIn page. Can you, can you scroll down? There's pictures of me. Then the rate my professor, my Twitter. But I don't know how many people, when they Google themselves, get somebody else's Wiki page. There's Denis Rancourt's Wiki page on my - you're, you're looking at Joanne St. Lewis and you get Denis Rancourt on the first page. That's because there's so much activity of the - there's a student union. Then, the other two things are, are tied to this and the final one is actually from Mr. Hickey's website. It's like - I know I'm sounding agitated now but I don't know to explain. I've worked - I've worked very, very hard for my career. I've devoted it to social justice. I've built what I consider to be a really strong reputation. I've got the confidence of other people in the work I do and the quality of work I do. It's - that is why the

university asked me to do that report in 2008. I wasn't a junior professor. I was a well-established professional. And I can't begin to tell you how distressing it feels for me to not be able to control my own public personality and on top of that, for it to be about something I didn't do.

5 I, I, I've never denied racism. I didn't do that. But that's what is conjured up, because that word, that word makes me not who I am. Okay?

Q. Which word?

10 A. House negro. It's a person who doesn't stand up for other people, who would sell-out for their own interests, their own community or whatever, of - that's ethical, that they have to do it for their own interests and on top of that, for compliments or benefits from somebody else. That's, that's not who I am. That's
15 not who I've ever been. It suggests that I don't know to speak my own mind. Well, let me tell you, the one problem I don't have is the ability to speak my own mind. I know exactly who I am. I think that Denis Rancourt knew nothing about me because that's the only possible way that
20 you could actually say something so false about me. To suggest that I would actually do anything or say anything because I'm taking direction from somebody else, much less that I'm succumbing to a powerful authority figure? That - my whole career, everything I've done, right up to -
25 within the immediate time, I'm sitting at - at the time this was happening, I'm a benchner of the Law Society of Upper Canada. I've been - like I have the confidence of my colleagues across the province that I'm in that
30 position. I'm writing discipline decisions that are going directly to people's livelihood. Trust me, that's not exactly a popularity contest. That's not a, a place where

you're, you're making friends. You're making a decision based on a - a set of ethical principles to uphold the honour of your profession. That's what I was engaged in doing at that time. In fact, I'd already been engaged in doing it for seven years. And so I'm - it's supposed to be believable that for a student report on racism, I'd suddenly become a spineless ninny. I'm suddenly so confused, I can't speak up but I can do these other things at exactly that time. It just wasn't and isn't who I am. That's not me, at all.

Q. Now, that testimony you just gave on impact and - that's just - you'd just seen the snip-it on the Google search result. You have not clicked on it yet. So, when...

A. No.

Q. ...did you actually click on the item and look at the whole - read the whole article?

A. I didn't do that until we were well into the case and there's a really good reason for that. I had zero doubt in my mind, when I read that tagline or whatever you wanna call that snip-it, that I was a house negro, that whatever was attached to it, it's not just it wasn't good, that it was gonna be painful, that it was gonna be ugly. I used to work at the Ontario Human Rights Commission. I saw people who went through these race cases. Let me tell you, you cannot unread or unhear racist behaviour. I had no desire, whatsoever, to hear what Mr. Rancourt had to say about me on that full post until the moment when it was necessary because I had to assist in my lawsuit because I knew once I read it, I wasn't gonna forget it and it's not gonna go away. I'm never gonna forget it. The lawsuit will come to an end.

I'm not gonna forget this has happened to me or that he said the things that he said. So, it was, I think late, late April, early May, some point after April 15th, where I'm - where I was involved in looking at things related to the lawsuit and the take down notices and things like that.

Q. Late April, early May of what year?

A. The 20-11.

Q. 20-11, okay.

A. Yeah. Yeah.

Q. And what impact do these articles, both of them, that refer to you as acting as a house negro, have on your integrity as a law professor?

A. I think they have - there's two different levels at which they have impact. There is the general level because in the content of what is being said, especially around the access to information record, so called exposé, there's a suggestion that I misrepresented who I was when I did the report. The lack of independence, those things go, to me, to my professional ethics, my - the way in which I present myself and give my word. I think there's that part but there's another aspect to the impact on me, as a law professor, because of what my subject area actually is. I am one of the professors that teaches social justice. In fact, I was the coordinator for the first number of years. We, we - let me step back and tell you that at our law school, in a law school program, you don't have majors and minors like you have in other programs but at our law school, we actually have what we call concentrations or options and one of those is in the area of social justice. So, I was, for the first three years, the coordinator of the social

justice option. I was the one that was approving student programs and all of that, related to people who wanted to get that designation on their transcripts and during that first six years, I was the one teaching the mandatory social justice course for that option. So, my reputation
5 as a prof, in terms of who's gonna take my classes? What do you think about me as a prof? My, my bona fides in front of a classroom was - this is saying, well, who is this social justice prof? What kind of social justice prof denies racism? Like it, it, it's simply incompatible
10 that you can - somebody can hold you up and respect you if that other thing is true at the same time. They, they can't be reconciled in a meaningful way and my entire - as it happens, my entire career, including my teaching career, is specifically built around social justice work.
15 So, for me, it was affecting my credibility in the classroom. It had that possibility. I'm not saying it - in the first, in the first initial period, it happened I was already teaching, so some students had me from the term before. They had some counteracting real life
20 experience to say, but I know Professor St. Lewis, I've been in her class. I've heard her speaking. That blog post to me might not necessarily had quite the same impact on someone who had real information and knowledge and experience with me but to be a student who'd never had me,
25 who knew nothing about me, I think that's - that, that was definitely a challenge. I think the other piece that's a part of this is that I enjoy my teaching but I have to be really honest with you, being a black feminist in the classroom is not an easy thing. Being a black feminist in
30 a law school classroom is not easy at all. So, you're already in a space where you are trying to anchor your

professionalism. So, there's a range of things that already challenge and can challenge your legitimacy in the classroom. So, having this blog on top of it as a "resource source" for students in understanding who I am as a person as opposed to that opportunity to present myself in the way that I was to present myself, that's the disadvantage I had. I had the disadvantage that, that can come because of, of those vulnerabilities but I had that disadvantage that my students had information that was profoundly negative about me, should they Google about me, without any countervailing sense of who I was as a person. It just wasn't me. But they could make an easy choice. Let's just not take her course. Let's just not talk to her or let's just not find her as persuasive when she's doing this. And, and those are the kinds of things, the kinds of impacts, some of which I could see and others, which I sensed happening after this, this material went up. And I'm, I'm now over three years with it being there. So it, it's made - the best way I can frame it, it's made my teaching far less enjoyable. I enjoy my individual students but the way I feel when I enter my classroom, particularly with a first year group who knows nothing about me, I, I really have a real struggle inside myself, which I've never, honest to goodness never had before this happened to me. I'm a very confident person. I'm very sure of what I'm doing and I'm very committed to the work I do but, but this has made me aware that other people, who may not tell me directly, I'm standing in a room with 70 people, that some of those people may actually not think well of me, because of this post and because of these statements.

Q. And how would your first year class that - like say next September, you've got a new class of 70 first year students, how would they know about what was written by the defendant?

5 A. All they have to do is put in my name in quotes, which I think is - in this day and age, it's standard practice for students when they - even before, to be honest with you, even before they come to the law school, they're doing it when they're trying to figure out 10 which programs they wanna go to. So, they're trying to figure out who's in what school. And of course, they would go to the school's - law school site to see these are the professors that are teaching in specific areas I'm interested in maybe becoming an international human rights 15 lawyer or whatever but they also Google those individuals so they can learn more about them, to figure out if there's a fit between them and that program and/or in our case, students have options about which professors they wish to take. Our first year program is not a fixed 20 program where people are mandatorily assigned into sections so they get to choose their professor. So, there's even more of an incentive to be Googling your professor to figure out, do I really wanna be in Fred's class versus Joanne's class versus George's class, as an 25 example.

Q. And what impact would these two articles, Exhibit 3 and Exhibit 4, Professor St. Lewis, have on your integrity as a lawyer?

30 A. It is really difficult, I think, to reconcile that I would, for eight years, have sat in, effectively in judgment of the professional ethics of my

fellow lawyers and have such a loose ethical framework myself. It suggests that I'm not honest. We actually require candour and honesty on the part of our - the members of our, our profession. It suggests that I would and - that I would implicitly, that I would not advance
5 the interests of persons who were weaker. We're a service profession. Our, our job is to protect the vulnerable, particularly those of us who work in the area of human rights and social justice. That's our reason for being. So, I think it affects my integrity as a lawyer and the
10 professional ethics that I would bring to any situation. I think it would have and could have an impact on persons who are thinking, because the areas I work in involves social justice. I'm hard pressed to think that someone would want to hire someone for a race case who denies
15 racism, who is willing to condone abuse. Like how could you have confidence in your, your counsel if your counsel actually, when given the opportunity, was unable to manifest the qualities that you need in them. Right? I, for years as a benchler, was cheering the equity and
20 aboriginal issues committee, which was the central policy committee for the Law Society on these issues. I can elaborate, perhaps later, on the kind of work I did but the point is there is a profound hypocrisy if I'm able - if I'm doing that and saying to other people this is the
25 standard that you have to meet. These are the behaviours that are required of you. This is what we aspire to as we envision our profession becoming more and more inclusive, but by the way, it doesn't apply to me. By the way, you know, when I've got a chance in my own little bailiwick, I
30 play more fast and loose. And I, I think there's something - it's not just that it's painful. It's

profound - it's, it's damaging and it's reckless to, to not be able to understand that there's very specific impact happening to me because - not only because I'm a law professor, because I'm a member of the bar of Ontario and because of the kinds of roles I've held that I'm in a position where there's a heightened attention to the behaviours that I'm exhibiting myself. Certainly, I have that awareness when I was reading it and that's what I felt.

Q. Now, let's go to a new subject and that is the evaluation you did back in November of 2008 of the Student Appeal Centre Annual Report.

MR. DEARDEN: So, if we can get Your Honour and ladies and gentlemen of the jury, Volume 1 of the Book of Exhibits, Tab 8. It should be Student Appeal Centre, 2008 Annual Report, titled Mistreatment of Students, Unfair Practices and Systemic Racism at the University of Ottawa.

Q. Is that what you have at Tab 8, Professor St.

Lewis?

A. Yes, it is.

Q. And when was the first time you obtained a copy of this report at Tab 8?

A. I saw a copy of the report on November 12th, when I was in a meeting with Vice-President, Robert Major. He's Vice-President Academic at the time at the University of Ottawa. He's no longer in that position.

Q. And what year, November 12th of what year?

A. Of 2008.

Q. Okay. In a meeting with...

A. The Vice-President Academic...

Q. V.P. Academic.

A. ...Robert Major.

Q. Robert Major?

A. Yes.

Q. And why were you meeting Mr. Major about this 2008 Annual Report?

A. We met to discuss my doing an evaluation of this report.

Q. Of the SAC report?

A. Yes, of the Student Appeal Centre 2008 Annual Report.

Q. And what did you and Mr. Major - first of all, was there anybody else at the meeting?

A. Not that - not to my recollection. We were alone.

Q. Okay. And what did you discuss at that meeting?

A. He, he had a copy of the report and he handed me a copy of the report and I, I glanced through it very quickly, to get a, a flavour of the report and what we talked about was my doing an evaluation of it, given that the report was talking about unfair practices and systemic racism. In the conversation we had, the report alludes to other areas of the university but our conversation was about my looking at the academic fraud process, specifically. I, I wasn't looking at other administrative components of the university. That wasn't part of our discussion.

Q. Right. Okay, you said you flipped through the SAC report that he handed you at the...

A. Yes.

Q. ...meeting and what did you notice when you flipped through it?

A. Well, even from the title, the title had concerned me because it - because it's very conclusory, so I was looking through to see does - with a quick look, can I see that the report is tied to what appears to be in the title? And so, I'm doing the same thing. The first thing that occurred to me, what are the case studies, what are they basing it on? And a quick - again, they said, you know, this is what happened to U of O students and they say...

Q. Sorry, what page are you on?

A. I'm at page 4 of this - the Appeal Report, so that was the first part that, that I, I remember glancing on and noticing that they were using only Asian females as the example. So, that was a flag for me that concerned me right away. I didn't read more about it, I just - it was just sort of a red flag. I was just trying to get a flavour of the report. I flipped to the next page. I saw the big headline, it says, "Innocent Mistakes must be punished." I flipped the next page. "We decided you were guilty at hello." In other words, the, the tone was - and, and what - I didn't read the content that followed those headlines but my quick skim had me concerned and then the next thing, because of the work I do, was I was trying to figure out, well, what were they basing this on? So, I remember flipping to the back of the report, trying to find what - where the data was and they had a page, which is page 14, which says...

Q. Okay, let's...

A. Not page....

Q. ...find it. Let's find page 14. Or let me find it.

A. Page....

Q. Okay, statistics?

A. Yes.

Q. Okay.

A. It says statistics at the top of the page and then I looked at that and then I, I - there's another page. So, I'm trying to find - I remember flipping through saying, what are these statistics about? Like how can I contextualize them? And then I came to the third page, which was page 16, right after that. So, I remember kinda looking and scanning those numbers and not being sure what happened, and I saw, oh, here's the academic fraud cases. And the thing is, I'm a, I'm a member of the University of Ottawa's faculty and I'm talking about the university community as a whole. And so the university has thousands, double-digit thousands of students and just as a quick glance, this number of instances was problematic. It was a red flag in my head. Clearly something - there's a disconnect in concluding something if the numbers are this small.

Q. Okay, hang on, if you could.

A. Sorry.

Q. So, you said - how many students in 2008, about how many students attended...

A. About...

Q. ...U of O?

A. ...30 - 35,000 plus.

Q. About 35,000...

A. Yeah, I think...

Q. ...plus.

A. ...37 is - was the actual number for that year.

5 Q. And when you're talking on page 16, and you're saying the number of instances gave you a red flag. What are you referring to there?

A. Well, when you look at it, you just - like just even looking at the, the cases, right, you just
10 start at the top. Arts is one of the largest faculties. So, somehow they have six cases only in the whole Faculty of Arts, which itself must have thousands of students. So, seeing that half of the number of students they have from Arts are visible minorities is not enough to convince
15 me that even at this moment as I sit here before you, that that tells me the Faculty of Arts academic fraud process is riddled with systemic racism. And it's very basic. It's there for a couple of reasons. One, the student academic - the Student Appeal Centre is not seeing every
20 case of racism in the academic fraud process because - I should say, they're not seeing every case of academic fraud. In all honesty, there's a whole process of starting in the faculty itself. There are cases that could have been resolved. There are cases that might have
25 been involving students, racialized students that might've been resolved successfully. What this is, is a Student Appeal Centre experience with those students who came to use their services and they have this particular demographic but there's no - there was no context here to
30 understand those other pieces. And the other thing that I knew, is that students - it's, it's a rarer thing,

certainly coming out of my experience in our faculty, students don't necessarily commit academic fraud in every single course they have. They, they commit academic fraud in one class. They may take 30 courses over the course of their - the time at the university, depending on how many years they're there, how many programs they use but they may only do - commit academic fraud or be accused of it in one course. There are issues about whether in other courses with similar evaluation they did not commit academic fraud. There's all kinds of - in other words, there's all kinds of things that may explain the data that I just didn't have. My job was not to try and figure out the academic fraud process of the University of Ottawa. That was not my job. My job was to evaluate the Student Appeal Centre report. And putting it another way, this is a document about - of about 17 pages. It's like, it's like grading a paper, right? Like I - the papers we get in law school are twice that length. So, I'm being asked to read a document and see whether it actually has expressed what it has to express properly and it's done it well and critique that document, either saying here are the strengths of the document, here are the weaknesses of the document, this is what I think of the document. That's how I understood my mandate. I certainly was not there to try and interrogate overall the academic fraud process. That was never part of my mandate.

Q. And you mentioned earlier, Professor St. Lewis, the courses that the students don't commit academic fraud in every course. They may just commit it in one course. Why - in relation to what we see on page 16 with academic fraud cases, what are you telling us there?

A. Well, what I'm saying, for one thing, I

actually can't tell that from this. I don't know that but my guess, by looking at it, was I was assuming that that was the case but for all I know, these are actually individuals with multiple cases, within the department of multiple courses but I'm saying that, that's part of my
5 problem, that the data was unstable. Like I, I didn't know what the data meant but it's instances - I am assuming it's instances of fraud that they're talking about. Common law, one file, number of visible minorities, one. So, that's my program. So, one
10 racialized student went to the Student Appeal Centre, clearly a hundred percent of the students who went to the Student Appeal Centre were racialized, therefore the common law section is riddled with systemic racism because a hundred percent of the cases are, are visible
15 minorities. How does that work? Like I, I'm just saying, it didn't...

Q. Tell us.

A. ...work for...

Q. Does it?

20 A. I'm just saying it didn't work for me when I - so when I was looking at the figures, and certainly I had, you know, I, I did do an assessment of the report, why would I be concerned about that is because from doing this work, I can tell you one - there are a
25 couple of things that were really, really of concern to me. We are a large university and an international university. There are hundreds more students than this number, many of whom are coming - the students of colour, who are not committing any form of academic fraud, right?
30 So, I have a concern about the suggestion that there's some kind of predisposition or incapacity sitting in these

students, unless you can really prove it, because there's a, there's a damage to those student communities of saying that if you can't establish it, and think about that.

Like I, I - that's a problem. The other piece with it is when you are going to make an allegation of racism, it is not enough to have good intentions. It is too fraught and the people you are trying to assist are too vulnerable, for you to open yourself up to the possibility that you're going to be heavily critiqued. That's why when I read the report, the narrative part and the analytical

methodological part in my 2008 report, I really challenged what they said but when I wrote my first recommendation, I leaped over that problem. I didn't say, gee, it's a bad report. You're off the hook university, you don't have to do anything, 'cause I think there's a problem with the

numbers. Let them prove what they need to do with the numbers. In fact, I thought that's where the imbalance of power was. At the end of the day, there's a lot more control over data and how you can do it at the university end, the specificity of the experience was sitting with the SAC end who are making the assertion. So, I said, no, you've gotta have a way that what you're measuring is similar, so you can see the experience between the two context and actually understand what the problem is but I leaped to validating that the university had to do

something as my first recommendation. Though in the text, I really was very, very strong in saying what I said because I thought this was an extremely weak report and in some ways a dangerous report if people took it at face value. I thought there was dangers to the students that they were attempting to help and I thought to the overall way in which we address issues of racism, it was

inconsistent with the kind of rigour we wanna bring to that area when we name it. And so, I did have those concerns.

Q. So, why don't we go to Tab 14 of Volume 1, which is just an extract from your report and it gives the recommendation one...

A. Yes.

Q. ...that you just referred to. So, what is your recommendation?

A. My recommendation one, the bold part, is to conduct an independent assessment to determine whether systemic racism plays any part in the academic fraud process. And to me, that's obvious on its face. I'm saying what role does it have, where is it, and do a proper assessment. I think it's...

Q. And you're...

A. It's obvious.

Q. ...making this recommendation to who?

A. This recommendation is the one that is going to the Vice-President, Robert Major, and it's, it's being made to the university, in response to the SAC report. So, essentially, their assertion that there might be systemic racism in the university academic fraud process, I accepted the possibility and then leapt over saying they don't have to have the proof, let's get on with the job here and let's do the proper analysis, because only with a proper assessment could you have something that was not gonna be vulnerable to further attack a criticism.

Q. Why don't you read the text underneath the bold type for recommendation one?

A. So, what I said was that "SAC cooperate

with the university in allowing it to undertake an independent analysis of the academic fraud data, to identify and address any issues of systemic racism in the academic fraud process. All necessary measures should be taken to ensure the preservation of student privacy in the development of the report." Then...

Q. And why did you write that?

A. Because I met with Mireille Gervais and the meeting was a, a quite - it was an unsuccessful meeting because she was preoccupied. When I said - because I had a concern about the, the report data, to, to, to back step, I had met, at this point, with the university and I had asked for data. The kind of data I needed, they gave me some information but what I really needed was contextual data. I needed - I wanted to know more about the demographic profile of racialized students in the university as a whole. I wanted to know the demographic profile of racialized students in the academic fraud process. I wanted to know the profile by department, so that I could have a sense. If a department, for example, was significantly full of students of, of racialized students is one thing, but if, if you have a department which has very few but all of their complaints are against racialized students, that's a different signal, right? You think about it as the, the challenge with racial profiling versus employment equity. When we do employment equity, we're comparing to an outside number saying there's an under-representation of too few and that's a red flag that something may be wrong. We do racial profiling. It's the other thing. It's over policing. There are too many. They're ought not to be or explain to us why there are too many. So, that was the

same thing that was happening here. SAC had asserted that they had this problem, but their numbers weren't solid enough. So, I wanted to meet with them to see what I could do about those numbers. Was there something they could provide me as additional information because I didn't have that. When I met with Ms. Gervais...

Q. And who is she?

A. Mireille Gervais is the Director of the Student Appeal Centre and the author of the report. She was - she basically took this position that what I was asking for was to see their files but I, I didn't need to see the student complaint files to do what I was doing. And our conversation, it, it just, it just went nowhere. I can honestly tell you it just deteriorated and, and I left the meeting and, and we didn't get very far. But like with the main report, I, I work with students all the time. I don't expect students to be perfect. I get that they're advocating and I get they have a different experience base. And so what I did was I took seriously, the piece - I understood that even from the title, that what their concern was, was about a power imbalance. So, what I did was write into my report, ensure the preservation of student privacy in the development of the report. The only way to ensure that would be that she would have to be satisfied that the student privacy was actually protected, that it would meet to her satisfaction, and then they could come up with some method of going about doing this analysis but I wanted to make sure that that was a condition precedent, that they didn't have to go into the assessment and have to fight for the entitlement for student privacy. So, I wrote it into my report.

Q. And what do you recall is the date of that meeting with Ms. Gervais?

A. November 14th.

Q. Of what year?

A. 28 - 2008.

Q. Okay. So, prior to issuing your final report?

A. Yes, yes it was.

Q. Which was what date?

THE COURT: I didn't get that date, I'm sorry.

A. It was November 14th, 2008.

MR. DEARDEN: Q. And when was the date that your - that you submitted your final report to the university?

A. I believe that date was November 18, 2008.

Q. And so obviously, you agreed to do this evaluation. You did the evaluation. What conditions or restrictions were put on your mandate about what you could write in your evaluation report?

A. There weren't any. There were no restrictions at all. I was just asked to do the evaluation and there was no discussion of how I would go about doing it. They left that up to me. They, being the university in the - in this context.

Q. They left that up to you?

A. Yes, they did.

Q. And was any deadline imposed on you?

A. There was no deadline at all.

Q. And what decision-making powers did you

have regarding the 10 recommendations that you made to the university?

A. None, actually. My report was an evaluation of this report. It was an advisory document. I submitted it to the university and the ability to
5 respond or not respond or to do whatever remained the university's.

Q. And what was your understanding of the mandate that you were given to evaluate that Student Appeal Centre report?

A. I understood that I was to review the document and the way I put it is look and - look at their, their statement, conclusion around systemic racism and look at the extent to which the report supported that there was systemic racism at the university in the
15 academic fraud process; in whole, in part, or not at all but I simply had the whole continuum of possibility there as a question to, to address in my review report.

Q. Sorry, what did you say was - whether it was...

A. Whether it was - whether they - it was supported...

Q. Supported, okay.

A. ...in, in their report; in whole or in part or, or not at all but I basically had the whole
25 continuum of the question available to me. There was no direction pointing me to do one thing or the other or land in one space or the other.

Q. Now, Mr. Rancourt has alleged that your report is a counter-report. A counter-report. What do
30 you have to say about that?

A. It's not. It's an assessment of the

student report. A counter-report, to, to be honest with you, it's a misuse of the word, because it would imply that what I did was made a set of recommendations that were at odds with or how does their goal eroding the student recommendations, and conveniencing, you know, being convenient for the university. I - my first recommendation says, you know, you don't get off the hook because the students didn't have the right methodology here. You better do this properly and you better work - you have to work together to get this done properly because I thought it was a very important issue. I have a number of recommendations that goes to procedural fairness. So, the students, in their report, did make errors around administrative process. Again, I left out - I talked about the errors in my narrative, but I leapt over their errors to say, you know what, they're right about the way in which these procedures, these delays are unfair. That's an area I work in, administrative law. So, I immediately wrote recommendations that I think they ought to have said. I tightened and reconfigured the recommendation because I felt the university should take steps to be responsive. So, from my perspective, I had - and there are a couple of other recommendations that go to more what I call public education of the student body and, and that sort of thing but I'm saying, from my - that's on - at this Tab 14, that's, that's what you're seeing, two and three. So, recommendation two, ensure timeliness in the responses of all staff to students and their representatives in the matters of academic fraud. One of the things in the student narrative that really did strike me, is they talked about the length of time between the student receiving the allegation and the university, from

the student perspective, seeming to spin their wheels without getting on with the process. So, the students weren't even necessarily informed. With the time lapse, of course, you can appreciate students might even be in another term without the academic fraud allegation from the previous term resolved. So, they, they had these experiential pieces that I actually responded to by saying, you know what, you don't get to just say, you're the university, you should be responding in a timely way. And so I wrote in the narrative beneath, "The SAC report raised the issue of adequate and timely responses from senior administrative staff. All student communications should be acknowledged and the student re-directed, if need be, to the appropriate processor individually. A communications vacuum only serves to compound an already stressful situation and may contribute to further delay. This does not mean, however, that a substantive response must be provided when students choose not to follow the clearly established procedure." The reason I said that is because if you have a procedure, you've got to follow the process. Write the letter to the person who's supposed to do those pieces. You can't kind of create, especially in a large university, an anomaly of idiosyncratic kind of process that you would like. So, I was flagging for the students for - you know, if you, if you want timeliness, go to the right place, follow the, the directions and process they have. Then you've got a basis to complain that the process isn't working properly or the discretion is being exercised against you. And then I said it would not be unreasonable for students to receive an acknowledgement of their correspondence within 14 business days, because I was - one of the things I was taken by was

that an inordinate amount of time that was happening. Then the third recommendation, I said, "The length of time for resolution of the appeal process by the Centre of Appeals committee should 30 business days from receipt of all submissions from both the student and faculty." So, I
5 wanted to impose on the, the senate appeals, which is where the students are going at - for their final determination. Think about it, like the Supreme Court of Canada, the final - a final stop, that they would actually have something timely. And so to me, the university could
10 have the resources, do whatever it needed to do to make that 30 days happen. And so that's what I said, and as you notice in this narrative, I won't read it all but you go midway, I said, "The 82 days delay is inconsistent with the other deadlines that are now in place." You know I -
15 so I write about how they should deal with all the deadlines. So, I talk about faculties, 21-day deadlines, you know. So, I, I'm trying to get at reinforcing the student argument and also to say to my colleagues, because this is all - what they were talking about was not just
20 the set of appeals committee and central admin, they were also talking about the conduct of my colleagues in other departments and there really was an unfairness. There was really, you know, a, a failure to consider the situation and location of the students. So, these three
25 recommendations in particular, out of the 10 I made, I'm hard pressed to see how they're indicative of someone being convenient to the university, actually countering the student report and in fact, my recollection is that the students did not - the Student Appeal Centre and the
30 director herself, did not view my recommendations as a counter to their report or a counter to their

recommendations. That, that's my recollection.

Q. Well, in fact, why don't you turn to Tab
16 of...

A. Oh, yes.

Q. ...the first volume of the...

A. Yeah.

Q. ...Book of Exhibits. That - this is a
Student Appeal Centre news item of December 17, 2008, SAC
Annual Report based on 388 students, lived, experienced,
claimed to be unsubstantiated, inconclusive and
inflammatory by the University of Ottawa and if you flip
the page, you see at the bottom, it's written by Mireille
Gervais.

A. Yes.

Q. At 1:01 p.m. Well, what were you trying
to recollect?

A. Well, the thing, the thing that was clear
is that the Student Appeal Centre and Mireille Gervais
took great issue to the narrative of my report, which
really challenged their methodology in what they did. But
what I found interesting about this was that is when, when
they get to the end of this sort of castigation of, you
know, what the university has done, what they said is....

Q. Where are you?

A. I'm at the very last paragraph of the
blog post, where she says, "The University of Ottawa has
not yet taken any action to implement Professor St. Lewis'
and the Students Appeal Centre recommendations." She
yokes my recommendations together with hers. She has no
criticism of my recommendations because they, in fact,
support her recommendations and this is, you know, a month

later. December 17th, 2008, she can say whatever she wants because certainly in the front end of this, she has lots to say about how she doesn't like the criticism about methodology and science and everything else. This is also obviously her opportunity to distance herself in any way she sees fit from my recommendations. Instead, she yokes them together and, and speaks about it in that way.

Q. And what is she saying in the first paragraph on the top of that page...

A. In fact...

Q. ...two of three.

A. ...she separates out her discussion of my narrative and says, "Nonetheless, Professor St. Lewis concludes her report with 10 recommendations that echo the SAC reports recommendations and demands, including strict adherence by the Senate Appeals Committee to reasonable deadlines in the establishment of a university policy protecting undergraduate students from discrimination and non-sexual harassment." I think that's my recommendation nine, eight or nine in my report. I, I can't begin to tell you how shocking it is to me, given the recommendations that I wrote to two years after my report is tabled with the university, to have Denis Rancourt writing that I'm a house negro of President Allan Rock, based solely on his view of that November 2008 report, because those recommendations and what I did, is simply completely at odds with his ability to make the statement that he made.

Q. And so, this Tab 16 was written December...

A. December 17th, 2008.

Q. So, after December 17, 2008 through to

this day, has Mireille Gervais told you that your 10 recommendations don't echo the SAC's reports recommendations and demands?

A. No, she hasn't.

5 Q. And has she told you, since she wrote this blog in December 17, 2008, that the University of Ottawa should not implement your recommendations?

A. No, she hasn't.

10 Q. And when was your mandate completed, Professor St. Lewis, in evaluating this SAC report?

A. November 18th, 2008 when I handed the report in.

MR. DEARDEN: Your Honour, would this be a good time to break for the day? It's almost four-thirty.

15 THE COURT: Well, I see it is. So, we'll break until ten o'clock tomorrow morning. Thank you very much, ladies and gentlemen. These - the books should stay. They're not exhibits and I don't want you to bring them with you until you deliberate. So, you should put them - well, leave them there, because you're not deliberating now and some parts of this may or may not ultimately form part of the evidence. Thank you. Have a good night.

...JURY RETIRES (4:29 p.m.)

20 DENIS RANCOURT : Monsieur le juge, j'ai une question procédurale avant de fermer pour la journée qui serait importante. L'onglet - y'a un onglet où on a décidé de mettre...

30 INTERPRETER: Your Honour, I have a

procedural question before concluding for the day. Tab - there's a tab where we decided....

LE TRIBUNAL : Peut-être me dire où? Dans quel des...

INTERPRETER: Maybe, tell me where, which one?

DENIS RANCOURT : Oui, oui, le volume 1, l'onglet numéro 14. On a choisi de mettre un extra de l'exhibit, une seule page. Y'a 10 recommandations. On a mis que trois et je comprends pas le - je vois pas. On voit pas la logique de ça puis ça m'inquiète parce que y'a - c'est un document entier puis y'ont choisi de donner juste une page.

INTERPRETER: Yes, Volume 1, Tab 14. We chose to put an excerpt of the exhibit. There's 10 recommendations existing, only three were put in. I don't understand. I don't see the logic behind that and it concerns me. It worries me because this is an entire document but they chose to put just one page.

LE TRIBUNAL : C'est à cause de son - du témoignage en principal. Vous pouvez, si vous pensez que y'a des choses que vous voulez soulever, vous pouvez amener le reste ou une partie du reste puis poser des questions.

INTERPRETER: Well, this is chief we're on, okay? If you think there are things that you want to bring up, you can ask questions on the rest, bring the rest if you want.

DENIS RANCOURT : Okay. Alors, on peut comme ça...

LE TRIBUNAL : Mais...

DENIS RANCOURT : ...choisir des morceaux de documents pour les mettre en exhibit?

INTERPRETER: So, we can just like that choose to put parts of documents in exhibit?

MR. DEARDEN: No, no, Your Honour, I have a quick answer for you, if I could. This, again, I object to this objection. What I did - okay?

Professor St. Lewis brought up recommendation one in her testimony. So, I took her right there but if - but what I did here, because the full report is at Tab 15. Okay? The full report is at Tab 15 and all the recommendations are in there but if you look at Tab 13 and 14, what I did is - and this was to expedite her cross when I get to this, is I'm saying your draft recommendation number one is at Tab 13, so you see it

highlighted. So, we're - it's a comparison of recommendation one in draft form and Tab 14 is the final recommendation number one. And that's what I'm gonna take her to but if the full report is the next tab. I just happened to see that recommendation there and that's why I took her to that tab. There's nothing nefarious about it.

DENIS RANCOURT : Non, je suggérais pas érais pas ça. Je voulais juste comprendre le processus.

C'est tout. Si, si on...

INTERPRETER: No, I know what you're saying. I just wanted to understand the procedure.

LE TRIBUNAL : C'est un aide ça pour...

DENIS RANCOURT : Oui.

LE TRIBUNAL : C'est un aide, je veux dire, et puis c'est pour ça, mais de toute façon, comme maître Dearden dit, il est là.

INTERPRETER: It's an aid. It's to serve to assist, that's why. Like I said, like he said, it's there.

DENIS RANCOURT : Okay. Donc, je comprends maintenant qu'on peut faire ça. Ça va me simplifier la vie à moi aussi quand utiliser cette méthode-là.

INTERPRETER: Okay, so now I understand that you can do that. So, that's gonna simplify my life also. I'll use that same method.

LE TRIBUNAL : Oui, oui, c'est ça. C'est que si - oui, oui.

INTERPRETER: Yes, yes, that's right.

DENIS RANCOURT : Merci.

INTERPRETER: That's it. Thank you.

LE TRIBUNAL : Toujours tenant compte que si y'a pu avoir une réplique, si vous vous - vous pouvez pas introduire quelque chose pour cacher quelque chose.

DENIS RANCOURT : Non.

LE TRIBUNAL : La question c'est pour - si c'est pour expliquer puis le témoignage que - vous pouvez le faire. Vous pouvez référer à un passage en partie. C'est peut-être plus facile d'avoir un paragraphe que d'avoir tout le rapport

lorsqu'on veut cibler telle ou telle chose. Le rapport est là.

INTERPRETER: Always keep in mind that you can have a reply. You can't introduce something simply to hide something. If it's for - to explain, to help with the testimony, you can do that. You can refer to an excerpt of a full document. It may be easier to have just one paragraph instead of having the full report, if you want to concentrate on one thing. It's just - the report is there.

DENIS RANCOURT : Oui.

LE TRIBUNAL : D'accord.

DENIS RANCOURT : C'est juste que quand c'est des pages séparées, c'est difficile de savoir que un est le *draft*, l'autre est l'originale parce qu'on a - y'a pas de titre. Y'a pas rien.

INTERPRETER: When it's separate pages, it's hard to know one is a draft, the other one is original. There's no title or anything.

LE TRIBUNAL : Oui, mais il faut écouter le témoignage...

DENIS RANCOURT : Oui, merci.

LE TRIBUNAL : ...puis c'est - oui.

INTERPRETER: Well, you have to listen to the testimony.

DENIS RANCOURT : Merci.

INTERPRETER: Thank you.

CLERK REGISTRAR: Court is adjourned until tomorrow.

...WHEREUPON THESE PROCEEDINGS WERE ADJOURNED

FORM 2

Certificate of Transcript
Evidence Act, Subsection 5(2)

5

10

I, Francine Bourque, certify that this document is a true and accurate transcription of the recording of Joanne St. Lewis v. Denis Rancourt in the Superior Court of Justice held at, 161 Elgin Street, Ottawa, Ontario taken from Recording(s) No. 0411_CR36_20140515_093919 which has been certified in Form 1, by Renee Commodore.

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SUPERIOR COURT OF JUSTICE

JOANNE ST. LEWIS

Plaintiff

v.

DENIS RANCOURT

Defendant

P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE JUSTICE M. CHARBONNEAU
on May 16, 2014, at OTTAWA, Ontario

APPEARANCES:

R. Dearden

Counsel for the Applicant

D. Rancourt

In Person

(i)
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LEGEND

[sic] - Indicates preceding word has been reproduced verbatim and is not a transcription error.

(ph) - indicates preceding word has been spelled phonetically.

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1.
Joanne St. Lewis v. Denis Rancourt
Voir Dire

FRIDAY, MAY 16, 2014

(10:05 a.m.)

THE COURT: Good morning.

MR. DEARDEN: Good morning, Your Honour.

INTERPRETER: Good morning, Your Honour.

THE COURT: Members of the jury.

DENIS RANCOURT : Non.

INTERPRETER: No.

DENIS RANCOURT : J'ai une question...

INTERPRETER: I have a question...

DENIS RANCOURT : ...importante...

INTERPRETER: ...an important question...

DENIS RANCOURT : ...qui va changer la...

INTERPRETER: ...that will shake...

DENIS RANCOURT : ...procédure...

INTERPRETER: ...change process...

DENIS RANCOURT : ...et j'aimerais trois
minutes pour...

INTERPRETER: ...and I would like the three
minutes to...

DENIS RANCOURT : ...expliquer ça.

LE TRIBUNAL : D'accord.

INTERPRETER: ...explain what is coming.

DENIS RANCOURT : Monsieur le juge...

INTERPRETER: Your Honour...

DENIS RANCOURT : ...la loi...

INTERPRETER: ...the law...

DENIS RANCOURT : ...prévoit que je dois
être...

INTERPRETER: ...foresees...

DENIS RANCOURT : ...libre d'avancer...

INTERPRETER: ...that I am...

DENIS RANCOURT : ...la charge...

INTERPRETER: ...that I am free...

DENIS RANCOURT : ...très sérieuse de...

INTERPRETER: ...to advance...

DENIS RANCOURT : ...crainte raisonnable de
partialité.

INTERPRETER: ...the reasonable
apprehension...

DENIS RANCOURT : C'est très difficile pour
moi de faire cette...

INTERPRETER: ...of bias.

DENIS RANCOURT : ...intervention.

INTERPRETER: It's very difficult for me
to...

DENIS RANCOURT : Alors, donnez-moi...

INTERPRETER: ...intervene...

DENIS RANCOURT : ...trois ou cinq minutes...

INTERPRETER: ...this way.

DENIS RANCOURT : ...car je dois...

INTERPRETER: Give me three to five...

DENIS RANCOURT : ...présenter la nouvelle
preuve.

INTERPRETER: ...because I need to present
new evidence.

DENIS RANCOURT : Lors de ma motion du 7
mai...

INTERPRETER: During the motion on...

DENIS RANCOURT : ...2014...

INTERPRETER: ...the 7th of May...

DENIS RANCOURT : ...pour que vous...

INTERPRETER: ...2014...

DENIS RANCOURT : ...vous requissiez...

INTERPRETER: ...asking for you to reclude...

DENIS RANCOURT : ...votre décision...

INTERPRETER: ...yourself...

DENIS RANCOURT : ...a été silencieuse...

INTERPRETER: ...your decision...

DENIS RANCOURT : ...sur le point central
que...

INTERPRETER: ...was silent...

DENIS RANCOURT : ...j'avais...

INTERPRETER: ...on the...

DENIS RANCOURT : ...fait...

INTERPRETER: ...central point...

DENIS RANCOURT : ...que vos décisions...

INTERPRETER: ...that I had made...

DENIS RANCOURT : ...dans cette action...

INTERPRETER: ...that the decisions...

DENIS RANCOURT : ...pouvaient affecter...

INTERPRETER: ...in this matter...

DENIS RANCOURT : ...la réputation de...

INTERPRETER: ...could impact...

DENIS RANCOURT : ...l'Université d'Ottawa
et...

INTERPRETER: ...the reputation...

DENIS RANCOURT : ...affecter donc...

INTERPRETER: ...of the University of
Ottawa...

DENIS RANCOURT : ...la valeur monétaire de
ses...

INTERPRETER: ...and therefore...

DENIS RANCOURT : ...bourses aux étudiants...

INTERPRETER: ...impact the...

DENIS RANCOURT : ...auquel vous donnez de...

INTERPRETER: ...monetary value...

DENIS RANCOURT : ...l'argent régulièrement
et annuellement.

INTERPRETER: ...of the bursaries of the
university to which...

DENIS RANCOURT : Ensuite...

INTERPRETER: ...you also contribute...

DENIS RANCOURT : ...le premier jour de ce
procès...

INTERPRETER: ...annually. Then, on the
first day of this trial...

DENIS RANCOURT : ...lundi le 12 mai...

INTERPRETER: ...on the first - on the 12th
of May...

DENIS RANCOURT : ...de cette semaine...

INTERPRETER: ...on Monday of this week...

DENIS RANCOURT : ...nous avons fait...

INTERPRETER: ...we...

DENIS RANCOURT : ...dans l'après-midi, une
motion...

INTERPRETER: ...in the afternoon, conducted
a...

DENIS RANCOURT : ...soit disant un Voir
Dire...

INTERPRETER: ...motion, a - called...

DENIS RANCOURT : ...avec des facteurs...

INTERPRETER: ...Voir Dire...

DENIS RANCOURT : ...avec des factums

plutôt...

INTERPRETER: ...with factums...

DENIS RANCOURT : ...des factums qui étaient
détaillés.

INTERPRETER: ...that were detailed.

DENIS RANCOURT : Monsieur Dearden a...

INTERPRETER: Mr. Dearden...

DENIS RANCOURT : ...amenait la motion...

INTERPRETER: ...brought the motion...

DENIS RANCOURT : ...avec un factum de 32
pages...

INTERPRETER: ...with a 32 page factum...

DENIS RANCOURT : ...servi le 9 mai...

INTERPRETER: ...served on the...

DENIS RANCOURT : ...et accompagné d'un
livre...

INTERPRETER: ...9th of May...

DENIS RANCOURT : ...des autorités de...

INTERPRETER: ...accompanied by...

DENIS RANCOURT : ...347 pages.

INTERPRETER: ...a 347 page...

DENIS RANCOURT : Sa motion était pour...

INTERPRETER: ...Book of Authorities.

DENIS RANCOURT : ...éliminer ma défense...

INTERPRETER: His motion was to...

DENIS RANCOURT : ...dite...

INTERPRETER: ...quash...

DENIS RANCOURT : ...*litigation by proxy*...

INTERPRETER: ...my litigation by proxy...

DENIS RANCOURT : ...*contrary to the Charter*.

INTERPRETER: ...contrary to...

DENIS RANCOURT : J'ai répondu avec un
factum...

INTERPRETER: ...the Charter defence.

DENIS RANCOURT : ...le - du 9 mai...

INTERPRETER: I answered by factum on the...

DENIS RANCOURT : ...un factum de...

INTERPRETER: ...9th of May...

DENIS RANCOURT : ...14 pages et un livre...

INTERPRETER: ...a 14 page factum...

DENIS RANCOURT : ...des autorités de 342
pages.

INTERPRETER: ...and a Book of Authorities of
342 pages.

DENIS RANCOURT : J'ai argumenté en détail...

INTERPRETER: I argued in detail...

DENIS RANCOURT : ...que en faite...

INTERPRETER: ...that, in fact...

DENIS RANCOURT : ...ma défense...

INTERPRETER: ...my defence...

DENIS RANCOURT : ...était une défense...

INTERPRETER: ...was...

DENIS RANCOURT : ...d'abus de processus...

INTERPRETER: ...a - an abuse of process...

DENIS RANCOURT : ...ayant trois branches...

INTERPRETER: ...claim...

DENIS RANCOURT : ...dont une branche...

INTERPRETER: ...three-prong...

DENIS RANCOURT : ...était la défense...

INTERPRETER: ...one being...

DENIS RANCOURT : ...dite Janelle (ph)...

INTERPRETER: ...the Jamel (ph)...

DENIS RANCOURT : ...ou Jameel...

INTERPRETER: ...Jameel or rather defence...

DENIS RANCOURT : ...basé sur une décision
de...

INTERPRETER: ...based...

DENIS RANCOURT : ...2005...

INTERPRETER: ...on a 2005...

DENIS RANCOURT : ...de la...

INTERPRETER: ...decision of the...

DENIS RANCOURT : ...England and Wales Court
of Appeal...

INTERPRETER: ...England and Wale [sic]...

DENIS RANCOURT : ...qui s'appelle...

INTERPRETER: ...Court of Appeal of Wales...

DENIS RANCOURT : ...Dow Jones Incorporated
v. Jameel...

INTERPRETER: ...Dow Jones Incorporated v.
Jameel...

DENIS RANCOURT : ...et j'ai pointé au...

INTERPRETER: ...and I...

DENIS RANCOURT : ...paragraphe 68 à 71...

INTERPRETER: ...pointed to...

DENIS RANCOURT : ...de mon *statement of*
defence...

INTERPRETER: ...68 to 71 of my...

DENIS RANCOURT : ...comme plaidant...

INTERPRETER: ...statement of...

DENIS RANCOURT : ...cette défense de Jameel.

INTERPRETER: ...defence as having pled this
defence, the Jameel defence.

DENIS RANCOURT : La décision de cette Cour a

été...

INTERPRETER: The decision of this Court
was...

DENIS RANCOURT : ...énoncée le 14 mai...

INTERPRETER: ...rendered on...

DENIS RANCOURT : ...vis-à-vis ladite
motion...

INTERPRETER: ...the 14th of May...

DENIS RANCOURT : ...ou Voir Dire de monsieur
Dearden.

INTERPRETER: ...to rule on the motion.

DENIS RANCOURT : Les paragraphes 61 à 67...

INTERPRETER: Paragraph 61 to 67...

DENIS RANCOURT : ...de mon *statement of*
defence...

INTERPRETER: ...of my statement of
defence...

DENIS RANCOURT : ...ont été radiés.

INTERPRETER: ...were quashed.

DENIS RANCOURT : Les paragraphes 68 à 71...

INTERPRETER: Paragraph 68 to 71...

DENIS RANCOURT : ...sont restés intacts...

INTERPRETER: ...remained...

DENIS RANCOURT : ...ainsi que ma défense
Jameel.

INTERPRETER: ...as did my Jameel...

DENIS RANCOURT : Ensuite...

INTERPRETER: ...defence.

DENIS RANCOURT : ...le 15 mai...

INTERPRETER: Then...

DENIS RANCOURT : ...hier...

INTERPRETER: ...on the 15th of May...

DENIS RANCOURT : ...pendant mon énoncé...

INTERPRETER: ...yesterday...

DENIS RANCOURT : ...d'ouverture...

INTERPRETER: ...during my opening
statement...

DENIS RANCOURT : ...la Cour a permis à...

INTERPRETER: ...the Court allowed...

DENIS RANCOURT : ...monsieur Dearden de...

INTERPRETER: ...Mr. Dearden...

DENIS RANCOURT : ...m'interrompe...

INTERPRETER: ...to interrupt me...

DENIS RANCOURT : ...quand j'étais en
train...

INTERPRETER: ...when I was...

DENIS RANCOURT : ...d'expliquer ma
défense...

INTERPRETER: ...explaining my...

DENIS RANCOURT : ...Jameel au jury...

INTERPRETER: ...Jameel defence to the
jurors.

DENIS RANCOURT : ...et Monsieur le juge...

INTERPRETER: Mr...

DENIS RANCOURT : ...a...

INTERPRETER: ...Your Honour...

DENIS RANCOURT : ...à ce moment-là...

INTERPRETER: ...then...

DENIS RANCOURT : ...sur-le-champ...

INTERPRETER: ...on the...

DENIS RANCOURT : ...après que le jury
s'est...

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5	INTERPRETER: ...spot...
	DENIS RANCOURT : ...s'est...
	INTERPRETER: ...when the jurors...
	DENIS RANCOURT : ...a, a, a quitté la, la
	salle...
	INTERPRETER: ...had left the courtroom...
	DENIS RANCOURT : ...Monsieur le juge a, sur-
	le-champ...
	INTERPRETER: ...Your Honour...
10	DENIS RANCOURT : ...radié et interdit ma
	défense Jameel...
	INTERPRETER: ...on the spot struck...
	DENIS RANCOURT : ...malgré mes
	protestations...
15	INTERPRETER: ...my Jameel defence...
	DENIS RANCOURT : ...et malgré le fait...
	INTERPRETER: ...despite my protest...
	DENIS RANCOURT : ...de ne l'avoir - de ne...
	INTERPRETER: ...and despite the fact...
20	DENIS RANCOURT : ...de ne pas l'avoir
	fait...
	INTERPRETER: ...that you had not done so...
	DENIS RANCOURT : ...comme Monsieur le juge
	aurait dû le faire...
25	INTERPRETER: ...when you should have done
	so...
	DENIS RANCOURT : ...si il en avait
	l'intention.
	INTERPRETER: ...if you had the intent of
30	doing so.
	DENIS RANCOURT : Ça fait plus de trois

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ans...

INTERPRETER: It's...

DENIS RANCOURT : ...que je me bas pour une
justice procédurale...

INTERPRETER: ...more than three years that
I've been fighting...

DENIS RANCOURT : ...dans cette action...

INTERPRETER: ...for procedural justice in
this matter...

DENIS RANCOURT : ...et là...

INTERPRETER: ...and now...

DENIS RANCOURT : ...je vois que mon
statement of defence est...

INTERPRETER: ...I see that my statement
of...

DENIS RANCOURT : ...radié...

INTERPRETER: ...defence has been...

DENIS RANCOURT : ...coupé en morceaux...

INTERPRETER: ...struck...

DENIS RANCOURT : ...devant mes yeux...

INTERPRETER: ...cut up...

DENIS RANCOURT : ...pendant mon énoncé
d'ouverture...

INTERPRETER: ...before my very eyes, in my
opening...

DENIS RANCOURT : ...en contradiction avec la
décision...

INTERPRETER: ...and this is contrary...

DENIS RANCOURT : ...considérée de...

INTERPRETER: ...to the considered...

DENIS RANCOURT : ...de votre cour le 14 mai.

INTERPRETER: ...decision of this Court...

DENIS RANCOURT : Ça donnerait des
cauchemars...

INTERPRETER: ...on the 14th of May.

DENIS RANCOURT : ...à Kafka lui-même.

INTERPRETER: This would give Kafka
nightmares.

DENIS RANCOURT : À mes yeux...

INTERPRETER: In my eyes...

DENIS RANCOURT : ...nous sommes plus au
Canada...

INTERPRETER: ...we are no longer in
Canada...

DENIS RANCOURT : ...et on ne peut plus...

INTERPRETER: ...and we cannot...

DENIS RANCOURT : ...prétendre à un système
de...

INTERPRETER: ...claim...

DENIS RANCOURT : ...justice dans cette
action...

INTERPRETER: ...to claim...

DENIS RANCOURT : ...devant vous, Monsieur le
juge.

INTERPRETER: ...to still have a justice
system before...

DENIS RANCOURT : Je suis outré...

INTERPRETER: ...this matter with you
presiding.

DENIS RANCOURT : ...par ce bâillonnement
imposé de façon...

INTERPRETER: I am disgusted by...

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DENIS RANCOURT : ...d'apparence
arbitraire...
INTERPRETER: ...this handcuffing...
DENIS RANCOURT : ...qui ne me permet pas
d'être entendu.
INTERPRETER: ...in all appearances are
arbitrary but...
DENIS RANCOURT : En anglais, *to have my day*
in court.
INTERPRETER: ...it denies me to have...
DENIS RANCOURT : J'ai...
INTERPRETER: ...my day in court.
DENIS RANCOURT : ...plaidé à but de
processus...
INTERPRETER: I've pled...
DENIS RANCOURT : ...sur toute la ligne...
INTERPRETER: ...abuse of protest
throughout...
DENIS RANCOURT : ...et maintenant...
INTERPRETER: ...and now...
DENIS RANCOURT : ...en procès...
INTERPRETER: ...during the trial...
DENIS RANCOURT : ...je n'ai même pas le
droit...
INTERPRETER: ...I do not have...
DENIS RANCOURT : ...de dire que...
INTERPRETER: ...the right...
DENIS RANCOURT : ...l'Université d'Ottawa
finance...
INTERPRETER: ...to stay - say the
University...

DENIS RANCOURT : ...entièrement la
plaignante...

INTERPRETER: ...is entitled to financing...

DENIS RANCOURT : ...ou d'utiliser la
défense...

INTERPRETER: ...the Plaintiff...

DENIS RANCOURT : ...Jameel...

INTERPRETER: ...or to use the Jameel
defence...

DENIS RANCOURT : ...s'appliquant aux
situations...

INTERPRETER: ...that applies to...

DENIS RANCOURT : ...précisément aux
situations...

INTERPRETER: ...precisely...

DENIS RANCOURT : ...où le défendeur...

INTERPRETER: ...to the situations where the
Defendant...

DENIS RANCOURT : ...avance un manque...

INTERPRETER: ...advances...

DENIS RANCOURT : ...de dommage réel...

INTERPRETER: ...the absence of...

DENIS RANCOURT : ...à la réputation...

INTERPRETER: ...real damages to the
reputation...

DENIS RANCOURT : ...un dommage réel...

INTERPRETER: ...a real...

DENIS RANCOURT : ...à la réputation...

INTERPRETER: ...damage to the reputation...

DENIS RANCOURT : ...pas à autre chose.

INTERPRETER: ...not to anything else.

DENIS RANCOURT : J'ai été très choqué...

INTERPRETER: I was...

DENIS RANCOURT : ...par ces événements...

INTERPRETER: ...frustrated...

DENIS RANCOURT : ...incompréhensibles...

INTERPRETER: ...by those incomprehensible
events...

DENIS RANCOURT : ...et j'ai été profondément
perturbé...

INTERPRETER: ...and I have been...

DENIS RANCOURT : ...toute la journée
d'hier...

INTERPRETER: ...perturbed profoundly...

DENIS RANCOURT : ...confus aussi...

INTERPRETER: ...all day yesterday...

DENIS RANCOURT : ...en temps que personne...

INTERPRETER: ...confused as a...

DENIS RANCOURT : ...autoreprésentée.

INTERPRETER: ...self-rep.

DENIS RANCOURT : Ce matin...

INTERPRETER: This morning...

DENIS RANCOURT : ...j'informe la Cour...

INTERPRETER: ...I'm advising the Court...

DENIS RANCOURT : ...que je ne peux plus...

INTERPRETER: ...that I cannot...

DENIS RANCOURT : ...participer...

INTERPRETER: ...participate...

DENIS RANCOURT : ...dans un tel processus.

INTERPRETER: ...in this...

DENIS RANCOURT : Je quitte donc...

INTERPRETER: ...process.

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DENIS RANCOURT : ...ce processus...
 INTERPRETER: I am leaving...
 DENIS RANCOURT : ...injuste.
 INTERPRETER: ...this unjust process.
 DENIS RANCOURT : Vous allez prendre...
 INTERPRETER: You will take...
 DENIS RANCOURT : ...les décisions...
 INTERPRETER: ...the decisions or make the
 decisions...
 DENIS RANCOURT : ...en mon absence.
 INTERPRETER: ...in my absence.
 DENIS RANCOURT : C'est terminé...
 INTERPRETER: This is...
 DENIS RANCOURT : ...pour moi.
 INTERPRETER: ...it's finished for me.
 DENIS RANCOURT : Je quitte.
 INTERPRETER: I'm leaving.
 MR. DEARDEN: Just go on record, Your Honour,
 that...
 THE COURT: Well, we'll see...
 MR. DEARDEN: ...Mr. Rancourt...
 THE COURT: ...we'll wait for Mr. Rancourt.
 Apparently, he's leaving now.
 LE TRIBUNAL : Vous quittez maintenant...
 DENIS RANCOURT : Oui...
 LE TRIBUNAL : ...monsieur Rancourt?
 DENIS RANCOURT : ...je quitte.
 INTERPRETER: You're leaving now? Yes, I'm
 leaving, Your Honour.
 MR. DEARDEN: Are you abandoning your
 defence, Mr. Rancourt? Mr. Rancourt, I asked

you a question.

DENIS RANCOURT : Je, je, je quitte et je...

INTERPRETER: I am leaving and...

DENIS RANCOURT : ...souligne à la Cour que
je n'ai pas à répondre...

INTERPRETER: ...I am noting...

DENIS RANCOURT : ...aux questions de
monsieur Dearden...

INTERPRETER: ...to the Court that I...

DENIS RANCOURT : ...qui ose me poser des...

INTERPRETER: ...do not have to answer Mr.
Dearden...

DENIS RANCOURT : ...questions directes...

INTERPRETER: ...who dares ask me direct
questions...

DENIS RANCOURT : ...devant Monsieur le juge.

INTERPRETER: ...Your Honour.

MR. DEARDEN: No, I was actually looking at
the judge and...

INTERPRETER: No, I was...

MR. DEARDEN: ...ask any question.

THE COURT: In any event, I think it's - he's
saying he's leaving. He's - we have to
decide whatever that entails. So.... Yes,
sir? You want to make some...

MR. DEARDEN: Well, I just wanted to put on
the record, Your Honour, that absolutely no
prior notice was given by the Defendant to us
that he was gonna make the statement that he
has just made to the Court and obviously, for
publication. It's stunning that this

Defendant would even do that. I mean he's done a lot of stunning things throughout this three years but that one, I guess, tops the cake - takes the cake. So, I imagine, Your Honour...

THE COURT: You want some time to think about what we - because, obviously, we're - I gather we have to decide how we're going to proceed. Are we in a default proceeding now? Are we - so, we have to think about it, I think.

MR. DEARDEN: Yeah, I want some time to think about it...

THE COURT: Yeah. Maybe...

MR. DEARDEN: ...Your Honour. I seems to me off the cuff that the jury would be let go because the Defendant has left and he wouldn't answer any further questions. So, there was no point in trying to pursue exactly what he really was intending.

THE COURT: Okay. Well, we have to think about this. Obviously, in 17 years, it's the first time a party has walked out in the middle of a trial...

MR. DEARDEN: But I don't think default, Your Honour. Again, this is just off the cuff because I think maybe the trial proceeds with you as a judge alone...

THE COURT: Oh.

MR. DEARDEN: ...to make findings. You've been listening to all the evidence thus far.

There won't be cross-examination on it but I believe that now, it can be converted to a judge alone.

5 THE COURT: But that's what we have to think about. Obviously, it will either continue before the jury or it will continue before myself as a judge alone but I don't know. We should look into it more specifically and find out if there's any precedence for this or - and how we - thinking about it, we can come to what exactly is the best way to proceed from now on. So, we'll take - we'll advise the jury we're - that we're gonna take an hour and we're going to - is that enough or try to figure this out or do you want to break for the morning or do you wanna...

10 MR. DEARDEN: Yeah, we probably should break for the morning, Your Honour, and could you also remind Mr. Hickey, who is sitting right there, who has his own blog and who issued a press release on behalf of the so-called Ontario Civil Liberties Association about this case, that this is a Voir Dire. The jury is still here. He can't publish anything about what was just said by Mr. Rancourt, the Voir Dire.

15 THE COURT: Well, I would hope that everybody knows that it is an offence to publish anything that is said in the absence of the jury. So - because - so, that's very important to remind everybody. I would

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assume everybody knows that but everybody understands the reason why that anything that is said in the absence of jury can only be reported and published after the trial is over.

MR. DEARDEN: So, we come back when, Your Honour? Like noon? Would that work?

THE COURT: I'd say - if we're taking the morning, we'll come back at one o'clock.

MR. DEARDEN: One o'clock. Okay, thank you, Your Honour.

R E C E S S

(10:15 a.m.)

15 U P O N R E S U M I N G: (12:58 p.m.)

MR. DEARDEN: Good afternoon, Your Honour.

THE COURT: Good afternoon.

MR. DEARDEN: Your Honour, Rule 52.01(2)(a) and (b), which we'll hand up to you, is relevant to the situation we find ourselves in and that is where - that's subrule (2), Your Honour, "where an action was called for a trial and a party fails to attend. The trial judge may proceed with the trial in the absence of the party and where the Plaintiff attends and the Defendant fails to attend, allow the Plaintiff to prove the claim." And I've asked the Registrar to page all parties interested in St. Lewis v. Rancourt. He did that at - about two minutes ago. So, we're one o'clock right now and I'm gonna ask him

5 to page again and my proposal, Your Honour,
is that we proceed with the jury. We proceed
with the jury and that I call Professor St.
Lewis to continue - to continue her
examination-in Chief and the jury be called
back in. So, I'm wondering, Your Honour, if
the Registrar could do another page and my -
what the Plaintiff wishes to do, Professor
St. Lewis wishes to do is proceed with her
10 claim before the jury.

THE COURT: Thank you. Possibly you can call
Mr. Ranson (ph), Mr. Rancourt, I'm sorry.

CLERK REGISTRAR: All parties involved in the
matter of St. Lewis and Rancourt to courtroom
number 36. All parties involved in the
15 matter of St. Lewis and Rancourt to courtroom
number 36.

THE COURT: All right. So, the...

JOSEPH HICKEY: May I make a request for
clarification, Your Honour, about the media?

COURT REPORTER: Can you approach, please?

JOSEPH HICKEY: I am Director of the Ontario
Civil Liberties Association, a non-profit
volunteer on rights and freedoms
25 organization. I also am a blogger and in
that way, I'm a member of the media and I
would like or request for clarification about
your order this morning that matters dealt
with in the absence of the jury may not be
30 published. I'd just like to raise the
question in the interest of the open court

principle and freedom of speech and balancing the need to not contaminate what the jury hears. If there is some further clarification about what can be published and can't be published.

MR. DEARDEN: Can you identify yourself, please?

JOSEPH HICKEY: My name is Joseph Hickey.

THE COURT: The rule is quite clear that in a jury trial, anything that occurs in the courtroom, in the absence of the jury cannot be published until the jury - until the trial is over. I don't think there's any exception to that. Obviously, there's no - it's not done in-camera in the sense that the public is present. It's just a question of publication. So, if there's two people from the public or fifty from the public in the courtroom, they know about it. So, it's not hidden from the public but it cannot be published. It can be - and the reason for that is not to, in any way, influence the jury. So, that legal principle applies in all jury trials. There's really no exception to it.

JOSEPH HICKEY: For example, is the simple fact that Mr. Rancourt left the courtroom, is that banned from publication?

THE COURT: Well, I suppose if I decide to go with Mr. Dearden's proposal, it will be - I will have to advise the jury something about

Mr. Rancourt not being here and then, in front of the jury, in all likelihood, there will be a mention that Mr. Rancourt has decided not to participate further and has left the courtroom. So, to that extent, those - that will be said but anything else should not be said until the trial is over. All right. Well, in somewhat of a surprise to the Court this morning, Mr. Rancourt read a brief statement and at the end of which he indicated that he would not be participating in this trial any further and I asked him if he was - what he was doing now and he said, "Well, I'm leaving." and he stood up, took his personal things and books and whatever other material he had and left the courtroom. The issue becomes now what should be done at this time. Obviously, the trial - this trial has been a very long process and I think it is imperative that the trial not be postponed any further. So, the trial should continue. The decision is - the decision of Mr. Rancourt is a decision he made and it's totally outside of the purview of this Court to, in any way, rectify the situation. It will necessarily - a trial without the Defendant would necessarily be not in the best interest of the Defendant but it's - it rests purely on him to make that decision, which he has and has made that decision, for whatever reason he has in mind. Rule 52.01,

obviously, deals with this particular situation. It's interesting that one - when one tries to find case law under Rule 52.01 directly in point of the party failing to continue to participate or failing to appear at a trial, it's - there's one case that is reported back in 1957 in the Ontario Court of Appeal and - which dealt with an adjournment, request for an adjournment, which was refused and as a result thereof, the Defendant did not participate and the trial proceeded in the absence of the Defendant. It went to the Court of Appeal and in those circumstances, the Court of Appeal found that on a motion to set aside the judgment found at - the trial judge acted properly in continuing with the trial. Now, obviously, this is prior to Rule 52.01 and it may be that Rule 52.01 is there to cover the situation. I think the only two - the only question that remains is whether we proceed with the jury or not and I think that really Mr. Rancourt requested a jury trial. It was his notice and the fact that he wants to - he wanted the matter to be dealt with by a jury and that the jury has already started to hear the evidence, I think it's proper to continue this trial with the jury and I so order. So, we will continue the trial then with the jury. I had anticipated maybe a little longer and I told the jury to come back at one thirty since we

5 had been asking them to be very patient and waiting. So, I told them to come back at one thirty. So, we will resume with the jury at one thirty and I'll simply advise them that Mr. Rancourt has decided not to participate any further in the trial and that the trial continues. All right.

CLERK REGISTRAR: Well, Your Honour, Your Honour, the juries are all back.

10 THE COURT: They are?

CLERK REGISTRAR: Yes.

THE COURT: Oh.

CLERK REGISTRAR: I just brought the last one in so, it's up to you.

15 THE COURT: Oh, if they're in, then I thought they would - if they're - I was going - okay. So, everybody's ready then?

MR. DEARDEN: Ready, sir.

THE COURT: All right. Okay, thank you.

20 MR. DEARDEN: Sorry, I just asked the question of Madam Court Reporter, Your Honour, if we need the interpreters and if we don't...

25 THE COURT: Oh, the interpreters, yes. Now, that's - well, that was one - I - that was one thing. Obviously, the interpretation was for basically - no. That's right. The interpreters was for anything that was going to be said in French and mostly, that would come from Mr. Rancourt and his Francophone witnesses, I would assume and the

30

5 interpretation, if I understood Mr.
Interpreter this morning or yesterday, you
mentioned that right now what is being
interpreted is only the French portion of the
trial.

INTERPRETER: Yes, interpreted towards
English solely for the purposes of Mr.
Dearden and his assistant originally...

THE COURT: And...

10 INTERPRETER: ...and then extended to the
public.

THE COURT: ...for members - English speaking
members of the public.

INTERPRETER: Correct, Your Honour.

15 THE COURT: So, well, we'll have to keep you
on standby unless there's something in French
that goes on but otherwise, we won't need -
it may be that it turns out that you are not
required but you should be on standby to....
20 All right.

CLERK REGISTRAR: All rise. All members of
the jury are present, Your Honour. You may
be seated.

...JURY ENTERS THE COURTROOM (1:11 p.m.)

25 THE COURT: Good afternoon. Sorry to have
kept you waiting. This morning, Mr. Rancourt
advised the Court that he would not continue
any participation in this trial. So, we will
continue the trial in his absence. All
30 right?

MR. DEARDEN: So, we will continue with the

27.
Joanne St. Lewis - in-Ch.
Voir Dire

evidence in-Chief of...

THE COURT: Yes.

MR. DEARDEN: ...Professor St. Lewis.

5 JOANNE ST. LEWIS: RECALLED

(1:12 p.m.)

EXAMINATION IN-CHIEF BY MR. DEARDEN:

Q. All set, Professor St. Lewis?

A. Yes, I am.

10 Q. Okay. Did you go to Mr. Rancourt's
website, U of O Watch today?

A. Yes, I did.

Q. And how many articles, related to you,
did you locate on the U of O Watch website?

15 A. I located 68 articles on the U of O Watch
website...

Q. And...

A. ...that were keyed to my name as
identified on the right-hand column of that website. I
20 looked at those articles.

Q. Okay, and are all 68 of those articles to
be found in Exhibits 5, 6 and 7, which are Volumes 2(a),
2(b) and 2(c)...

THE COURT: Possibly...

25 MR. DEARDEN: Q. ...of the Trial Book of
Documents?

THE COURT: ...possibly we'll have to give
the - or do you have them handy...

CLERK REGISTRAR: We only just....

30 THE COURT: ...or I thought maybe...

CLERK REGISTRAR: Yeah, we have them.

THE COURT: ...they would have been put
aside. Okay, thank you.

MR. DEARDEN: You wouldn't let them take
them, Your Honour, so they had to....

THE COURT: No, no, but I - what I'm saying
is that I thought they were on the table, as
compared to at their feet.

MR. DEARDEN: No, that's the next batch.

THE COURT: Okay, sorry.

A. Yes, they are.

MR. DEARDEN: Q. And the same thing, the
same questions, Professor St. Lewis, did you log into
Mr. Rancourt's website acting as a teacher today?

A. Yes, I did.

Q. And did you find articles related to you?

A. Yes. I looked at the keyword, my name,
on the right-hand column. It had the number seven beside
it. I clicked on it, and it's - I then scrolled through
the seven articles that referred to me that were on that
website.

Q. And are those articles found in Exhibit -
or those activist teacher articles found in Exhibit 7?

A. Yes, they are.

Q. Okay. And can you - I'm just gonna
refresh your memory. Tab 16 of Volume 1 of the Book of
Exhibits, so Exhibit Number 1.

A. Yes.

Q. That should be the December 17, 2008
Student Appeal Centre News...

A. I have it...

Q. ...article written...

A. ...before me.

Q. ...by Mireille Gervais?

A. Yes, I have it before me.

Q. And on page two, you'll recall you gave
5 evidence yesterday that - at the top of page 2, Ms.
Gervais writes, "Nonetheless, Professor St. Lewis
concludes her report with 10 recommendations that echo the
SAC's report recommendations and demands." And also at
the bottom of that page, Ms. Gervais writes, "The
10 University of Ottawa has not yet taken any action to
implement Professor Joanne St. Lewis and Student Appeal
Centre recommendations." My question for you, Professor
St. Lewis, in all of the articles that you reviewed on the
U of O Watch in activist teacher, did Mr. Rancourt ever
15 report that the Student Appeal Centre itself had written
that your recommendations echoed their recommendations?

A. Never once.

Q. And did you find in those U of O Watch 68
articles and the seven activist teacher articles,
20 Mr. Rancourt reporting that the SAC director, Mireille
Gervais herself, had called on the University to implement
your recommendations and their recommendations?

A. No, not once.

Q. Okay. Now, we're about to get into what
25 you did in evaluating that Student Appeal Centre report
and I want you to briefly provide some samples of your
expertise in dealing with issues of systemic racism and to
expedite things, why don't you tell us what you did for
the Ontario Race Relations Directorate, Ottawa office?

30 A. Amongst the files that I had carriage of
was the one specifically related to policing and in that

context, I was doing anti-racism training, addressing issues of systemic racism in policing culture and practice.

5 Q. And you also were employed at one time at the Ontario Human Rights Commission. What did you do with them or with that organization with - in relation to systemic racism?

A. At the Ontario Human Rights Commission, I was the executive assistant to the chief commissioner.
10 Amongst the big activities over the time I was there was addressing systemic racism within the Commission itself. There had been extraordinary delays in, in the handling of the race files, and so I was tasked by the Chief Commissioner to review all of those files and address the
15 problem and support the staff in redressing the problem in balance and in addition to that, I participated in the - with the senior management team in developing the first set of guidelines on racial jokes, slurs and harassment. That particular set of guidelines is actually the
20 foundation that evolved into what is the present-day document that the Commission uses on systemic racism and policy.

Q. And by the way, all of this experience that you're going to provide to us about analyzing
25 systemic racism, is prior to November 2008 when you were asked by the University to evaluate the SAC report, correct?

A. Yes. That - the curriculum vitae that I provided was specifically focused on the issues in this,
30 this litigation to capture the activities in the areas of racism, social justice and human rights...

Q. Prior to...

A. ...prior to...

Q. ...November...

A. ...November 2008 to provide the
5 foundation for my selection for the evaluation task.

Q. Okay. And you also became founding
director of the Education Equity Program at the University
of Ottawa's Law School?

A. Yes. After I served at the Ontario Human
10 Rights Commission, I was included by the Faculty of Law's
Common Law Section, and specifically to develop an
education equity program. What that meant was that my -
now my present colleagues had a concern that the law
school student body was not representative of the
15 diversity in the Canadian population, so I was hired to
design and develop a program that would actually achieve
results in transforming the law school and I was very
successful in doing that, within three years, actually.

Q. Okay. And you were Special Advisor on
20 Race Relations to the Deputy Attorney General of Ontario
and what did that entail?

A. That was a very specific task, responding
to community questions around systemic racism in policing
practice in Ontario after a number of highly public
25 incidents. I was tasked with providing advice directly to
the Deputy Minister in a range of ways, including
providing the advice that led to the establishment on - of
the Ontario Commission on Systemic Racism and in doing
that work, I developed and advised them on the mandate for
30 the Commission and I actually briefed the Commission on
the mandate that they would use over the next set of

years.

Q. Okay, and you were also involved in a report on Indigenous Black and Micmac Program at Dalhousie Law School?

5 A. That, that particular report was an unusual situation because the law school had a series of incidents that were challenged, which others in the community saw as racism against both black and Micmac students and professors. They established a committee of
10 inquiry. I was - I received a mandate from the vice-president at the time, Debra Hobson, to come in to advise that, that committee specifically on the perspectives of the black and - the black students and professors in terms of their experiences over the time. So, it was an applied
15 systemic racism analysis, but specific to the black community in terms of students and professors at Dalhousie Law School.

Q. Okay. And the Canadian Bar Association had a working group on racial equality. What did that
20 entail?

A. Following the birth of Wilson Task Force, which was established by the Canadian Bar Association to look at gender equality in the legal profession, they established a separate working group or task force
25 essentially to look at issues of racism nationally in the legal profession. I was the co-chair of that group and that group came out with a series of recommendations. As the co-chair, I wrote a complementary report, which is actually entitled "Virtual Justice, Systemic Racism in the
30 Canadian Legal Profession" and that was followed by, obviously, a series of initiatives by the Canadian Bar

Association to implement those various recommendations.

Q. Okay. And there was a Manitoba Aboriginal Justice Inquiry. What was it - what did that - what was your involvement in that?

5 A. I received a request from the Executive Director to the Implementation Committee. The Manitoba Justice Inquiry was looking at a broad range of issues that were affecting Aboriginal peoples in the Province of Manitoba. The request to me was to actually provide
10 advice to the Implementation Committee that came after the report and its recommendations, and my advice was specifically around issues of employment equity as the affected Aboriginal peoples in the Province of Manitoba, with a primary focus on the actions or lack thereof and
15 providing advice in terms of what the government could do to be more effectively inclusive and responsive to the concerns that had come out of the main report.

Q. And what issues of systemic racism came up in that inquiry?

20 A. Your - the range of things that deal with over-incarceration, but it's particularly in the area of employment. I'll focus on my mandate. You are talking about a lack of representation through - you can name every job sector in the Manitoba government where there
25 was a real under-representation. The other problem was also a pooling. So, the inability of people, once they got in at a very low level job, to be able to be promoted. The issues of how people understood Aboriginal expertise or reflected on what an Aboriginal candidate could provide
30 in a job that would be value-added. So, there were a tremendous amount of barriers that were really excluding

Aboriginal peoples, not only from participating in the job areas that were directly related to Aboriginal service delivery, but also for them to be seen and present in the other job sectors that would have been evolving the broader Manitoba public. There simply was, if you were looking at the sectors, a complete absence, and once you got to higher - the higher up you moved, the less visibility till you were at zero. And so, those were the kinds of issues that I was talking about in my report.

Q. And you also are an instructor on an Executive Program on Counter-terrorism that occurs at UCLA in California. What is that about?

A. The Executive Program is at the - based at the University of Southern California, in L.A. It is actually the anchor for a Homeland Security Centre of Excellence. After 9/11 happened, there was a deployment of a series of resources to address issues and to see what universities could contribute. I'm an instructor in the program and my area is looking at the intersection between my work in human rights, the areas of profiling and the systemic racism that occurs in decision making, creating profiles and actually looking at who - how they exercise their power around trying to prevent terrorism. So, I come in as a Human Rights person. I run a session that's basically around the human factor area as part of the systemic racism problem that can occur when you look at the vast range of legal powers that come with anti-terrorism activity. So, so that's what I do.

Q. And how often have you been an instructor at that course?

A. I've been an instructor since the very

first year the course was offered and I believe there's one - only one year I missed because I actually was ill that year. I, I had minor surgery and I was unable to attend. I'm the only Canadian that's regularly instructed in the program and I'm also the only African-Canadian woman that - well, African-American woman for that matter, that's instructed in the program. I'm a regular instructor.

Q. And who do you train?

A. It's a very interesting class. It's not - it's not a law school type program. It's not about students. It is front-line people who are doing the work. So, typically in a class, I'll have DEA officers, I'll have coast guard officers. I have fire, sheriff, police officers from different - in fact, in different parts of the world who are first responders. So, it's not unusual, we had people from Scotland Yard come into the course, people from Departments of Defence. Sometimes, we have the odd CIA desk officer who's in there and some of the Intelligence officers come into that course. So, that's - those are the students in the class.

Q. Okay, smoking gun question. Has Jack Bauer ever taken that course?

A. I would like to see Jack Bauer in the course. I'd just like to meet Jack Bauer, but no.

MR. DEARDEN: Your Honour, do you watch 24?

THE COURT: I do.

MR. DEARDEN: Jack is back. Sorry, I digress.

Q. Okay. So, that's your background...

A. Yes.

Q. ...Professor St. Lewis, in systemic racism, prior to the University of Ottawa asking you to evaluate the SAC report?

A. Can I - am I able to...

5 Q. Oh, did I miss....

A. ...add something else to it?

Q. Yes, you can.

A. The, the other area in which systemic racism occurs in terms of looking at cultural practices is, as I mentioned briefly, in the way in which people make decisions, and so there's a whole area of my work that is actually about training in anti-racist decision making. So, I've done that with the National Judicial Institute for Judges. I've done that with the Canadian Association - the Canadian Council on Administrative Tribunals and various human rights tribunals, the Ontario Human Rights Tribunal and Commission, the Canadian Human Rights Tribunal and Commission, SOAR, which is the body that trains all of the administrative tribunals and when I'm doing the training, my role in training is to actually focus on issues of systemic racism. So, I have a body of expertise at looking at organizations in terms of how - whether they're the decision makers leaders or adjudicators, in how they go about engaging in removing issues of racism and ensuring that what they do is actually not going to disadvantage people who are coming from racialized communities.

Q. Okay. Can we look at Tab 9 of Volume 1 of the Book of Authorities, which should be an email from you to Robert Major, Henry Wong and cc'd to Allan Rock...

A. Yes.

Q. ...and it says, "Please find attached my draft evaluation of the SAC report. I am happy to respond to any suggestions that you may have." And this is dated November 16, 2008 at 6:04 p.m. So, you sent that email?

5 A. Yes, I did.

Q. Your draft - what emails did you exchange with President Allan Rock prior to sending your draft report of - to - that is cc'd to him here?

10 A. I had no email or other communication with him - on my report? No. Other than to say that there was an initial conversation that I had by phone.

Q. When was that?

A. On November 12th, prior to my meeting with Robert Major.

15 Q. And we're talking 2008?

A. Yes, 2008.

Q. And just briefly, the phone call from - I - who initiated the phone call?

20 A. He called me. It was a very - it was a very brief conversation and it was a - the conversation was for me to meet with Robert Major. It was about, you know, there is this issue, can you meet with the vice-president and talk about your willingness to do an evaluation report. My, my core conversation about the
25 evaluation report and the mandate for the evaluation report happened with Robert Major.

Q. Yeah, at that point, when you had this phone call with Mr. Rock, did you even - were you even aware of the SAC's 2008 report?

30 A. I didn't. I didn't have any knowledge of it. I hadn't seen it. I'll be honest. I was the

director of the Human Rights Centre - the Human Rights Research and Education Centre at my faculty and I had my teaching responsibilities. I wasn't aware that they had done a report or what it was about. We didn't have a normal intersection that I would have had it brought to my awareness.

Q. Okay. Tab 10, which has the number 18 circled in the top right-hand corner. This is an Allan Rock email of November 17, 2008 at 11:25 a.m., sent to a number of people, none of which are you. When did you first read and have knowledge of this email sent by Allan Rock to these people?

A. I - this is part of the FIPPA documents, the Access to Information documents that were obtained by Mireille Gervais, and I only reviewed the FIPPA documents once we were engaged in the lawsuit and that's when I actually opened up the document and looked at it and were able to see the range of documents that were in the FIPPA.

Q. And just for clarity, if we look at Exhibit Number 3, Sting Number 6, the ATI records expose a high level cover-up.

A. Thank you.

Q. Is that - are those the FIPPA documents as you....

A. Yes. Freedom of Information - yes, those are the documents I'm referring to.

Q. Okay. So, this email from Allan Rock to his colleagues on November 17th, 2008, you had no knowledge of this until this lawsuit began?

A. No, I didn't.

Q. Okay. And now we have your draft report

goes November 16th and we're gonna see that your final
report was sent November 18th. Did you have any meetings
or discussions with President Rock between the time you
sent Mr. Major and others the draft report and the time
5 you submitted your final report?

A. No, I didn't.

Q. No emails, no phone calls?

A. No communication of any kind.

Q. Okay. So now, we know from yesterday's
10 testimony, you had a meeting in the afternoon of November
12th, which is a Wednesday, I think, with Robert Major,
just you and him, and when did you next meet Mr. Major?

A. I met him on November 14th, 2008 in the
afternoon.

Q. And who was at that meeting?

A. There were two persons at the meeting,
15 *monsieur* Barrette and a Henry Wong.

Q. And just briefly, what was their position
at the university?

A. At the meeting itself, they actually
20 didn't introduce themselves to me. So, I had the sense
that *monsieur* Barrette was coming from the vice-
president's office and had some kind of role providing
support to him, and at the time, I didn't know who Henry
25 Wong was. So, I learnt afterwards when I had an email
exchange with *monsieur* Major, who assumed that I knew he
was the former registrar, that he says to me, he's the
former registrar. In fact, my purpose in going to the
meeting was to get more data. So, I just saw them as
30 persons that *monsieur* Major identified as having
information that I needed to do my evaluation report, but

at the time, I, I didn't know

what their actual role or titles were. What put them in the meeting, I just assumed that they were there to provide me with the information I needed.

5 Q. They were a resource, in other words?

A. Well, yes, because I - it made sense to me that *monsieur* Major himself might not know the details in terms of the specificity of data I wanted, that that would be something that other people would know better
10 than he might know, since I needed very specific kinds of statistical data.

Q. And what statistical information was given to you that you considered for your report?

A. I was provided with some information. It
15 was more broadly contextual. So, *monsieur* Wong was able to give me information about the number of students in the overall university population and general demographic information. At the time, the University didn't have a practice of actually gathering data in the area I needed
20 most, which was data on the demographics of the racialized students, and, and that really wasn't a practice for any universities at the time and certainly U of O didn't have the data and he did provide me with, as I say, some, some printed, written material around this with the data, but
25 that was on - the only statistic that was really helpful to me, because I really needed the race-based data to do - to really critique the SAC report. If it was available, it would have been helpful. It wasn't there. The other data wasn't materially going to help me determined whether
30 or not it was systemic racism.

Q. Okay. So, your - you had this meeting

and it sounds like a stats meeting - statistical or data

collection meeting...

A. Yeah.

Q. ...of some sort.

5 A. Well, we actually didn't engage in that long a discussion. I - it's not like I would have had a, a debate with them about the data. I just needed to get the numbers and so I was like, do you have this kind of number or do you have the - you know, and I was looking at
10 the documents and having a chat about what I needed and I believe that, that after the conversation, I might even have received an additional email because the conversation was helpful to Mr. Wong to understand what I wanted and that he might have sent me something else. I, I truly
15 don't remember exactly what, but at the end of the day, I included, in my report, all the data that I received from them that was helpful to me, that I felt was of assistance.

Q. "Them" being the administration?

20 A. Yes.

Q. Okay. So, after your November - Friday, November 14th meeting is completed, that you held at Mr. Major's office, what do you do next?

A. I actually, after leaving that office,
25 went to see Mireille Gervais, because once I left the meeting with *monsieur* Major and his two colleagues, it was clear to me I didn't have any kind of meaningful race data, though it would have been helpful if the University had it. So, the only other place to get some kind of data
30 and the report I was critiquing had data in it, was to go and talk to Mireille Gervais about the number, to try and

get some sense of whether she might have other data,

because just because the report appeared incomplete to me,
it didn't strike me that she might not have other
information that, for whatever reason, she didn't choose
5 to put in or didn't realize the significance in supporting
her argument - those are the kinds of things I didn't
know, and so I went to meet with her so that I could have
a discussion about the data.

10 Q. And this is the meeting you discussed
yesterday that you had...

A. Yes, it's...

Q. ...with her?

A. ...the meeting that led to - of the
narrative under my Recommendation 1 where we ended up
15 instead of actually being able to come to some kind of
understanding about data or what additional information I
needed, we got derailed into this conversation about
student privacy, that - and the conversation didn't really
go anywhere.

20 Q. And you received no data from the SAC
director?

A. No. She did not want to share any data
with me. That was her position, actually.

Q. And in fact, she didn't?

25 A. No.

Q. By the way, did you know her before you
went over to meet her on November 14, 2008?

A. Yes, I did, actually. Mireille Gervais
was a student in my Social Justice class the previous
30 fall. So, she was in my Social Justice class from
September to December of 2007.

Joanne St. Lewis - in-Ch.

Voir Dire

Q. And did you have any other interactions

with her besides teaching her a course at the law school?

A. After, after the course finished, she actually sent me an email where - and it's not an unusual
5 thing. Students are trying to figure out what they can do with their degrees and where they can go. So, I, I distinctly remember an email from her. It would be late January, maybe February of 2008, the same year I did the report, but early in that year, where she act....

10 Q. Well, that wouldn't work.

A. Eh?

Q. The report was November 2008. So, it was...

A. Yes, I'm saying...

15 Q. ...in January...

A. ...the February of 2008, that same year, so early - a few months before, I had an email...

Q. Sorry.

A. ...from her and that email was actually
20 wanting to discuss with me options around graduate school and where she could go, that kind of thing. So, it's a very common thing and I think at that time - in fact, I might still have been the coordinator of the Social Justice Program in common law, and there wasn't an
25 equivalent in civil law. So, it wouldn't have been a surprise to me that that might have also been part of the reason for contacting me.

Q. Okay. If you turn - I'm just making sure I cover every tab here, Tab 11. So, I'm a little bit out
30 of order...

A. Yes.

Joanne St. Lewis - in-Ch.

Voir Dire

Q. ...but this is an email from Bart Cormier

to you, on...

A. Yes.

Q. ...November 12, 2008. So, just briefly,
5 what was that about?

A. Well, after I left the meeting with
monsieur Major, I immediately wanted to have material -
the most recent policy documents on academic fraud at the
university, *et cetera, et cetera*, and Bart Cormier, at the
10 time, was our Assistant Dean of Students, so he, within
the Common Law section, would have been tasked with
handling matters when they arose around academic fraud.
So, as I left the meeting, I immediately called him and
said, "I, I'm tasked with doing this evaluation. I need
15 some background material." So, I just requested to him,
"Could you provide me with the materials that you have,
the most recent Senate reports or any other material you
think would be relevant for me to have as background
materials?" And it was after working hours, and he had
20 done this and I was willing to rely on his knowledge in
terms of identifying the most recent materials. So, this
email is the response to my voice mail in terms of seeking
background materials for my evaluation.

Q. Okay. And then if you turn to Tab 12,
25 the next tab...

A. Yes.

Q. ...there's an email from Robert Major,
November 18, 2008 at 5:45 a.m., and it says,
30 "Thank you for preparing this
thoughtful analysis. It is extremely
helpful and will be of great use to

Joanne St. Lewis - in-Ch.

Voir Dire

the University community. I will be

5 faxing to my assistant Mireille a
copy where I indicate what may be
typos. Please have a look at them
before I make your evaluation
available. Mireille will forward to
you. Perhaps you might also want to
10 look at the wording of Recommendation
1, which seems to assume that there
is racism present already, although
your report says clearly that there
is no evidence of it. In any event,
I will be comfortable with any
15 formulation you determine. With my
best wishes and warmest thanks for
having accepted to conduct this
evaluation, Robert Major."

So, what was your response to this email from
Mr. Major?

20 A. I - actually, in addition to the email, I
did receive a sheet, which had isolated pages from my
report, which had some typos indicated on them. I changed
the typos. With regards to Recommendation 1, I actually
25 didn't change my Recommendation 1. I know that what I - I
understood where the, the, the comment was coming from,
which is that I had actually said that the Student Report
did not substantiate there was systemic racism, but my -
in my professional opinion, that was not a pivot. I felt
whether the students had gotten it accurately or not, the
30 University had an obligation to do an assessment under the
Human Rights Code, and in fact, my - what I did was I

looked again at the language of my Recommendation 1 and I

changed the language to strengthen the language. So, having received this, I wanted to be even clearer what I want you to do with this independent assessment, and I, I, I looked at the language again to try to be even clearer on what I wanted because I did not think that there was no issue of systemic racism.

Q. Okay, so let's look at the change you made. At Tab 13, that's your draft Recommendation Number 1, that Mr. Robert's email had you take a look at.

A. Yes.

Q. Prompted you to take a look at, and it says, "Identify the scope, if any, of systemic racism in the academic fraud process."

A. Yes.

Q. ...and Tab 15 is your final recommendation. So, what did you do there?

A. I, I changed - when I looked at my origin - my draft that they had received, it said the - my view, "Identify the scope, if any, of systemic racism in the academic fraud process." I thought, there's a possibility that they're just gonna say no, there's nothing there. We don't have to do anything. It suddenly occurred to me, having read that, that they would go there. So, my recommendation - my editorial changes was to - were to say conduct - in other words, affirmatively, "Conduct an independent assessment to determine whether systemic racism plays any part in the academic fraud process." So, what I wanted to make clear is it's not about some end point or one section of the academic fraud process, if it's there, at any point, be it at the dean process, the

mediation process, getting to the Senate appeals, the

whole thing has to be under scrutiny and figure out where the systemic racism problem rest, if any. And I just - when I looked back on it, I felt that my first recommendation was opened itself to supporting that suggestion, that there was something about Recommendation 1 that would give them an out, actually.

Q. Who's the "them"?

A. The "them" being the University.

Q. Okay.

A. To, to be precise, in the work that I do, when I'm working with institutions, it's not acceptable for an institution to simply say, "I don't know. Because I've not gathered the data, I don't know what's happening, so therefore, there's no problem." That was what I was trying to address with my recommendation clarification, that no, if you don't know, you ought to know, and then you get to say there's no problem.

Q. And then Tab 16 is your - or 15 rather, is your final report. You send it November 18, 2008 at 4:36 p.m. to Robert Major and Allan Rock, cc'd to Henry Wong and Jean-Marc Barrette.

A. Yes.

Q. "Please find attached my final report of an evaluation of the SAC 2008 Annual Report. I look forward to your comments." And your recommendations would be found at - I think five pages from the back, this final report is not page numbered but I counted five pages from the back is Recommendation 1 and the following pages, two to...

A. One through 10, yes.

Q. ...2 to 10.

A. There are two pages of recommendations.

Q. Two pages of recommendations. So
briefly, what are the recommendations you make in
5 Recommendation 2 through 10, because we've dealt with
Recommendation 1?

A. Two and three are really focused on the
procedural issues that the students have named. As I said
yesterday, I believe that there actually was a great deal
10 of validity to their concerns about the extraordinary
delay, 82 days, all of those things, I felt it was not
reasonable for any individual in authority, be it the dean
or the Senate Appeals Committee, to just have students
waiting, experiencing this tremendous anxiety as to the
15 outcome of their careers. So, two and three were designed
to not leave it open to choose any kind of dates. I
wanted to set reasonable dates that could be done by a
bureaucracy but to put some pressure on them to actually
meet and respond to the student experience, which is the
20 longer they're waiting with an allegation hanging over
their heads, the more distracted they are from actually
doing what they need to do as students, especially if the
outcome is going to be perhaps in their favour. They're
gonna lose all of that time. So, I, I set out those,
25 those recommendation. The next set of, of recommendations
are all what I, I see as almost as preventative or
proactive recommendations, a series of recommendations
that actually speak to the different opportunities I saw
when I did my research, where the University could
30 actually inform students better about the academic fraud
process, and one of the recommendations also speaks to SAC

informing students as well, because I felt...

Q. Which one?

A. It would be clear that students are -
just a second - it's Recommendation 6.

5 Q. Six.

A. The Student Appeal Centre should have
materials, which explain plagiarism or provide a link to
the Beware of Plagiarism! leaflet on their website. The
Beware of Plagiarism! leaflet that I'm referring to is
10 what the University had designed as information to inform
students about the nature of academic fraud in all of the
different ways. So, a preventative informative piece and
I thought it would be helpful if SAC, who was also had a
different set of relationships with students, actually was
15 tracking the available material, which was highly useful.
That would be the basket of recommendations. The one that
is different is Recommendation 9. Even though my mandate,
as I understood it, was strictly to deal with academic
fraud, from the title of the report, talking about abuse
20 of students, the, the page that they had in there speaking
about 338 cases that SAC was dealing with, instances where
students felt outside of the academic fraud process -
housing and a range of administrative systems, they were
experiencing problems with the institution. What I knew
25 was that the University did have a policy around personal
harassment and other matters, but it attached to the
graduate students. There was no such articulation of an
entitlement for the undergrads. So, I saw the
recommendation that SAC had in their report. I actually
30 thought it was a reasonable recommendation. The
difference between the SAC recommendation and my

recommendation is I more precisely name it as look at Policy 110 specifically as the model, but it's the same - the goal was exactly the same, which was to say, you, the University, need to come up with a policy that addresses this and allows students to articulate that inequality of power and to say something about being treated unfairly when a decision is being made, because there's a process set out in 1-10.

Q. Any other thing you want to mention about these recommendations 2 to 10?

A. No.

Q. Okay.

A. I don't have anything else.

Q. And Professor St. Lewis, in November 2008, approximately how many professors were teaching at the University of Ottawa?

A. I would say it was somewhere, at that point, maybe around a thousand.

Q. And...

A. Yeah.

Q. A thousand, around a thousand. And how many of those, approximately a thousand professors, expressed a concern to you about the independence of your evaluation report?

A. No one. No one said anything to me.

Q. And in November of 2008 or in 2008, how many students were there attending University of Ottawa, approximately?

A. Around 37,000.

Q. Thirty-seven thousand? And how many of those 37,000 students expressed a concern to you about the

independence of your evaluation report?

A. We're talking in November 2008 and leaving aside SAC and....

Q. Yeah, leaving aside...

A. Okay.

Q. ...Ms. Gervais, who isn't a student at this point, she's a graduate of the law school.

A. Okay. No one. Nobody communicated with me in email or any other form to say that they had a problem with my report or a problem with my independence or a problem with my recommendations.

Q. And what personal benefit or gain did you receive by writing this evaluation report for the University?

A. Well, none, other than my feeling that it was an important task and the satisfaction that I was making a contribution. There was no other benefit. I didn't receive monies for doing it. I didn't have any release in my course load or any of - any administrative benefit from doing it. I was more than willing to volunteer to add this to my duties and I was happy, because it's a topic that's very important to me. If there was - if there are issues of systemic racism that are facing the students - my - at the University, it's something that, that is personally very important to me. So, I wasn't - I certainly wasn't gonna say no to the opportunity to be able to contribute to a solution if there was a problem.

Q. Why do you say, if there was systemic racism...

A. Well, I'm saying, I'm talking about...

Q. ...against students....

A. ...at the time it was being raised to me, it was, do this evaluation report.

Q. I know, but why is that important? If
5 there was or wasn't, why is it important to you?

A. At a very personal level, I know what those students are experiencing. In a way, I would say some of them don't know. For most of my academic career, I was alone. So, when I was at law school, I'm not just
10 the first black woman to graduate. I'm talking about being in a class of 234 people and I'm the only black person in my class. I'm the only black person in the school. So, when things happened and arose for me, I didn't have anyone. There was no one else there, and so I
15 absolutely know what that feels. I came to the law faculty specifically to ensure that there would be a critical mass. It's very difficult when you bear the burden of being the only one or people make the assumptions that because there are two or three of you,
20 you're all gonna get along and you're all gonna have the same politics and think the same way. That's not how life works. That's not how human beings work. What you need to do is to build a community within a community for people and assume that they're gonna be relationships that can be
25 formed in that context. In my undergraduate McGill - at McGill, which was '76 to 1979, of course, McGill, international school, very diverse, but there were issues for us as black students amongst ourselves about how we were seen in the classroom by some of our professors.
30 It's a great school. I love that school but I'm saying I have experienced and know what it's like to have your

voice or your, your perspectives dismissed. So, at a very personal level, yes, and in a very specific level, this is my area of expertise. I've devoted my entire life to doing this kind of work and anti-racism and addressing issues of systemic racism is what I do. It's what I - it's, it's how I've constructed who I am.

Q. I'm gonna show you another article...

MR. DEARDEN: Thanks. Actually, Mr. Registrar, do I have six there?

Q. ...written by Mr. Rancourt on his U of O Watch and it's entitled - well, I'll let you have it, sorry.

A. Okay. Thank you.

MR. DEARDEN: So, what exhibit are we, Mr. Registrar?

CLERK REGISTRAR: This is Exhibit Number 8.

MR. DEARDEN: Exhibit Number 8. I just wrote on a jury's copy. It's entitled the "U of O Watch List of Allan Rock's Lies, Deceptions, Evasions, and Hypocrisies." Do we have any extra? Thanks. There should be six there.

Q. And if you go to the second page of 14 in this document, Professor St. Lewis, you'll see the second bullet:

"Personally managed to cover up of his administration's 2008 campaign to discredit a Student Union report about systemic racism revealed February 2011. Access to Information records show a cover-up directly orchestrated by Allan Rock himself to

hide the fact that Professor Joanne St. Lewis evaluation was anything but independent as characterized by the administration."

5 So, what role did you play in a campaign to discredit the 2008 SAC report, Professor St. Lewis?

A. First of all, I don't think there was a campaign to discredit the, the SAC report, but I played no role in any campaign. I had no knowledge of any campaign.
10 I simply was asked to do an evaluation of the report and I did the evaluation of the report.

Q. And what do you have to say about the cover-up?

A. I wasn't part of a cover-up, and to
15 suggest that I was part of a cover-up attacks my integrity - integrity as a law professor and my integrity as a lawyer, to suggest that I would have participated in a cover-up and as I've already pointed out, I did not discredit the SAC recommendations, at all. SAC themselves
20 acknowledged that my recommendations supported their recommendations, tracked their recommendations. They wanted my recommendations implemented. So, I'm confused as to how I'm discrediting a report whose recommendations I actually support and in many ways, as with the anti-
25 discrimination policy, try to be more specific and directive. I, I did not discredit the SAC report. What I did was to say that their report, in terms of the conclusion, was methodologically unsound, and SAC themselves admitted publicly that their report was
30 methodologically unsound. They did that in the short period of time immediately after. So, I, I have no idea

why in 20-11 - I did this report in 2008. In 20-11, I'm, I'm news and the report that's been tabled is news with me caught up in the toils of it was, well, surprising.

Q. Okay. So, your report has been
5 submitted. You testified yesterday that your mandate was over once you submitted the report...

A. Yes.

Q. ...to the University but you did do some
10 interviews...

A. Yes

Q. ...with the media about your final report
and why did you agree to do that?

A. Because I don't think it's unusual at all
for the person who's the report author to be the person
15 speaking about their own report and I felt that I was in the best position to speak about my report but I had another reason for wanting to do the media report. There was a really unfortunate timing, I felt, in the SAC report, and the media that Ms. Gervais was generating
20 around the report. The timing of the report was in November. So, I'm doing this in the mid - middle of November. That's a very vulnerable time for students. So, you've got a report telling them that there may - they may be submitting work within the next couple of weeks,
25 going in to exam period, into a system that's a corrupt system. If you're a racialized student and in one of those named groups, you are gonna think, can I get a fair shake? That's a real problem because I think at the best of times, students are nervous. They already aren't sure,
30 especially if they're in their first year, about what they're submitting. I'll be honest with you and say the

law students themselves can be very anxious about how do they do the paper and avoid academic fraud? So, a very sensational report with a, a conclusion that the system is, in some way, rigged to me, was a very potentially
5 damaging thing, not to the institution but to the students themselves, that the very students the report purported to help were going to be damaged by the sensationalism around the report and its conclusions and statements. I felt it was really important for, for them to have a different
10 voice and a different understanding of what was involved, and so I could explain what my recommendations were and how I got there, and some of the interviews that I was doing actually were not that narrowly focused on the report. The journalists in question were recognizing the
15 fact that I had expertise in the area and I was a, a law professor, so I was able to enlarge from the very narrow focus on the SAC evaluation to talk from those perspectives about what was happening and what the circumstances were.

20 Q. Okay. Tab 17. Tab 17 is a reproduction of what we've been calling the FIPPA documents, the *Freedom of Information Protection and Privacy Act* documents, released to Ms. Gervais of the SAC, and this is what Mr. Rancourt's February 11 article linked to and
25 different documents have a different number circled in the top right-hand corner and I want to have you look at Document 12. So, this is...

A. Yes.

30 Q. ...an Allan Rock email to Robert Major and others. You're not cc'd or sent this email and my question for you is when did you first read Document 12?

A. It was part of the FIPPA documents that I read when we were preparing for the litigation.

Q. So, after you sued...

A. Yes.

Q. ...Mr. Rancourt?

A. Yes.

Q. And if you flip to the next page, should be Document 15 in circle, and that's an Allan Rock email of November 16, 2008 to Andree Dumoulin and others, and you are not sent that email. When did you first read that email?

A. At the same time we were preparing for the litigation.

Q. Document 18 is the next page. So, Allan Rock, November 17, 2008 at 11:25 a.m. to - this email's not sent to you and when did you first read that email.

A. I read it at the same time I was preparing for the litigation. In fact, this email, in his exchange between the President and Vice-President Major, he actually expresses considerable concern about my Recommendation 1 and my calling for an independent assessment of systemic racism at the University of Ottawa. So, one of the things that happened is it was news to me that he had that concern. What I'd received from *monsieur* Major in terms of the page with the typos was a kind of squiggle and a question mark, plus the email that I previously said but I had no idea that the possible source of the concern expressed was actually President Rock until I reviewed the FIPPA documents, some, some while later as present, you know, preparing for the litigation in 20-11.

Q. You - in other words, you were not aware of these - of the three emails that I've just went through with you, Document 12, Document 15, Document 18, prior to submitting your final report, you were unaware of those documents?

A. I had no knowledge of those documents.

Q. Okay. And there's another one, Document 21. It's the next one. So, it's - we'll go from the top, Allan Rock to Andree Dumoulin, November 18, 2008 at 6:08 p.m.

A. I'm sorry.

Q. You should see a Document 21 circled.

A. I'm at - I needed to, to the...

THE COURT: It's about...

A. Oh.

THE COURT: ...four pages...

A. Oh, sorry.

THE COURT: ...after...

MR. DEARDEN: Same tab.

A. Which tab...

THE COURT: ...the....

A. ...am I supposed to be in? I got...

MR. DEARDEN: Q. The same tab, 17.

A. Oh, sorry, I - I'm sorry. I didn't catch that number.

Q. We're reviewing the...

A. Twelve, 15...

Q. ...the FIPPA documents...

A. ...18...

Q. ...that Mr. Rancourt....

A. I forgot there was an - I'm sorry, I

forgot there was another one. I'm at 21.

Q. Yeah, Document 21. So, you see...

A. Yeah.

Q. ...an email from Allan Rock, November 18,
5 2008, 6:08 p.m.

A. Yes.

Q. When did you first learn or read about
that email?

A. When I was preparing for the litigation
10 in 20-11.

Q. So, post-submitting your final report?

A. Yes, after the final report. Couple of
years after the final report.

Q. And still part of that email chain, there
15 is Allan Rock to Robert Major and others, November 18,
2008. It looks like the time is 17:13?

A. Yes.

Q. When did you first learn of that email?

A. When I reviewed the FIPPA documents. I
20 wasn't a part of - I wasn't a part of the conversations
that they were having about what to do or not to do.

Q. Who's the "they"?

A. I'm saying the University. I received a
request about - my request was a bare bones request. Are
25 you willing to do media, talking about your report? I
agreed to do that.

Q. Document 22, the next document. It's an
Allan Rock email to Andree Dumoulin, November 23rd, 2008,
and something has been blacked out by the FIPPA officer,
30 but it - we'll call it the Executive Summary. When did
you first read this email from Allan Rock?

A. I read it after when - I read it in 20-11
when we were preparing, actually, yeah.

Q. Okay.

A. I'm just smiling because it's not the
5 first time that somebody's said about my work that I'm too
long or wordy, so....

Q. Were you concerned I was gonna say that
to you?

A. No, I was just prepared. I thought I
10 would just be pre-emptive and acknowledge that other
people found it that way.

Q. Okay. Document 22, we've covered. You
discovered that in 2011, so well after you submitted your
final report?

A. Yes.

Q. And then there's a Document 24, a
handwritten number 24 in here, about three or four pages
later.

A. Okay.

Q. Andree Dumoulin to Allan Rock, Robert
20 Major and it's forwarding an Ottawa Citizen article.

A. Yes.

Q. When were you first aware of this email?

A. The email itself would have been in 20-
25 11, but the Citizen article, I was aware of before.

Q. No.

A. Where's, where's the Citizen article? Is
it two....

Q. No. Look at 20 - I'm on Document 24. Do
30 you see 24 in....

A. Yes.

Q. Okay. Now I know I haven't been accurate a couple of times today, so I stand to be corrected, but this is the November 26th, 2008, 7:00 a.m. email....

5 A. No, I'm being clear. All I'm saying is that the email communication between Allan Rock and Robert Major and Dumoulin, I didn't know about in 20-11 but the existence of the Citizen - like the coverage around me, which is the...

Q. Oh, I see.

10 A. ...article itself, I did know in 2008. I was following the coverage of my own communications in the media.

Q. Got it. So, the email itself, you didn't know about until...

15 A. No.

Q. ...2011, but you did...

A. But, but I certainly knew I'd given this interview when I did this and I read my own media.

20 Q. Okay. And now the next document should be Document 4...

A. Yes.

Q. ...circled four...

A. Yes.

25 Q. ...Andree Dumoulin, March 23, 2009, 8:00 a.m. to Robert Major, and in fact to expedite this, then there's another email below that, March 23, 2009, 6:23, and another email under that one that looks like it's 6:20. So, those three emails on Document 4, when did you first learn about those?

30 A. In 20-11, when we were preparing for the litigation.

Q. Okay. And then the one below it, you are aware of. That was Mr. Major writing you...

A. Yes.

Q. ...March 23rd, 2009 and actually while we're on it, what is this about, this March 23, 2009 email from Robert Major, and if you flip the page, there's an email from you to him. So, what - on March 20th, 2000 [sic]. What is that about?

A. I don't remember the very, very first moment but I received a letter from Robert Major and it related to my Recommendation 1. So, Vice-President Major asked me about the implementation of my Recommendation 1, and was I in a position to take on looking at how the University could go about implementing Recommendation 1. And he sent that - it was a formal letter that he sent, it wasn't an email and I wrote back to him after reviewing that letter.

Q. Okay. So...

A. And...

Q. ...let's go to the March 20th email. Let's do it in order. So...

A. Yes, I'm....

Q. ...you, on March 20th of 2009, you send Robert Major an email and it says, "Thank you very much for your letter of March 16, 2009 confirming my appointment to conduct a systemic review of the Student Academic Fraud Appeals process." So, we're there?

A. Yes, because it came....

Q. And what is it about?

A. I know it wasn't an email because it came by regular mail. It's dated the 16th, but I'd just opened

it. I, I sent my email upon opening it. Yeah.

Q. Okay. So, what is this about?

A. As I said, it's about my implementing my Recommendation 1. I read his letter, and so what I was writing back to him was my - a combination of my, my concerns about how I would be able to go about doing that, and so...

Q. And doing what?

A. Conducting...

Q. What are you ask....

A. ...an implementation of my Recommendation 1, which had to do with a systemic analysis of racism in the academic fraud process of the University. So, now I'm being asked to do that, which to me was a far more complicated and onerous task than reading a 17 page document and deciding, like rating a paper, whether it was founded or not. This was now looking at the entire University system and determining whether or not there was systemic racism and I knew I was going to face this data problem, because that's what I write in the second - the third paragraph here, because the first concern I have is - I had was there are all of these different departments with their own academic fraud processes, their own complaints processes. So, I have this whole problem. How am I gonna reconcile the data? So, what I did - what I did here was I started to indicate to him what the scale of the work would entail. That's what this entire letter is about, as I'm trying to point out that there are these concerns and I point out that in order to do it effectively, that I will actually need some additional administrative assistance to be able to do it because

there will be a lot of data that I will have to crunch in the time of doing it. The - I just wanna just take a moment?

Q. Mm-hmm.

A. One of the things that I did, I was looking for, when you go to the bottom of the letter, the sec...

Q. Email?

A. Of the email, sorry, the second star, I was still concerned about....

Q. What is it?

A. I'm...

Q. What is the second star?

A. The second star is at the bottom of the email when you go to the last paragraph, the second star, I was still concerned about the confidentiality issue. I knew that in the University writing to SAC, I anticipated that we'd be back at the same point I had been in, in November 2008.

Q. Can you read the second star?

A. And I'm about - I'm about the read that. So, what I did was reminded the vice-president about that issue and I sent a letter to the SAC, so I wanted something formal, asking them to cooperate with me in sharing of the data, which I - was part of what I'd said in the narrative of my recommendation, and then I said - and reassuring them that I will be independent of the University and that all personal information provided will be strictly confidential and that any reports will not, in any way, reflect said information or be available for use by the administration. So, I wanted that to happen before

I began the work, because I did - as I said, I had that exchange. It was clearly of significant importance to Ms. Gervais. Regardless of what happened in the meeting, I thought it was a valid concern, and so I wrote again to the University, to the vice-president, saying in the context of the second mandate, this was also a piece of my Recommendation 1 that also had to happen.

Q. And then Mr. Major writes - emails you back March 23. So, we're on the first page of Document 4, right at the bottom, he writes you back and says, "I think you have made very useful observations and reflections on the process are quite convincing. I don't have a problem with any of what you're bringing forward." And away we go. So....

A. Yes.

Q. Okay. Tab 18, this should be a December 6, 2008 U of O Watch article written by Mr. Rancourt entitled, "Rock Administration Prefers to Confuse Independent with Internal Rather Than Address Systemic Racism." When did you first read this December 6, 2008 U of O Watch article?

A. I didn't read it until we were preparing the litigation because the initial tagline email from Mr. Rancourt, I didn't respond to. I....

Q. What do you mean by that?

A. I mean I received an email from Mr. Rancourt with a tagline saying, "The following blog post is about you.", and...

Q. Okay.

A. ...and, and I'm, I'm saying, to me, that's not a way a colleague talks to another colleague,

through having posted a blog about them. I didn't know him, but it didn't strike me as something - it's not the kind of thing that I respond to, so I didn't respond to it.

5 Q. And you didn't open up the link?

A. No, I didn't have any reason to. I, I, I'm really telling you it wasn't - it wasn't a huge issue for me at that point in time. I tabled my report. I said what I had to say, but....

10 Q. Okay. I want to take you to some of the things he's written in this December 6th, 2008 publication, professor. If you go to the second page, and it's the second-last paragraph from the bottom. Okay?

A. Students?

15 Q. "Students who would attempt to pass an internal report as an independent report would probably be accused of academic fraud, but such intellectual dishonesty appears to be acceptable to the institution for a report denouncing the student association allegation of racism in treating academic fraud cases." So, what do you have to say about that?

20 A. Well, it's pretty clear what Mr. Rancourt did was accuse me of being a complete hypocrite, having committed academic fraud myself, basically meaning that I was unfit to do the report that I did, one, and on top of that, suggesting I had no professional integrity as a lawyer or as an academic, and I found it very upsetting when I finally read it. The idea that I was kind of
25
30
perpetrating some kind of fraud myself or in some way misleading the public, and particularly the University community, was very upsetting to me.

Q. And then, the next page...

A. I just wanna note something that troubled me when I read it as well, is that at the bottom of the page, the last sentence. He says, "The University appears to be far more concerned with casting doubt on the conclusions of the SAC report than on an independent examination of the issue." And I - when I read it the first time, and I still have the same view now, I don't understand what that means because I did not cast any doubt on the conclusions or recommendations of the SAC report. I actually fully supported the SAC recommendations and my recommendations were acknowledged by them as actually being implementable without any criticism whatsoever. So, I, I don't know what he read that could say that, because there wasn't a, a foundation to be able to make that statement.

Q. Okay. And I'm looking for the paragraph in here that says, "And restated as St. Lewis Recommendation 1, that SAC cooperate with the University in allowing it to undertake an independent analysis of academic fraud." Oh, there it is. And so, the third page...

A. Yes.

Q. ...sort of in the middle of the page, under main recommendations is to access...

A. Yes.

Q. ...SAC data. So, I'll start over.

"And restated as St. Lewis Recommendation Number 1, that SAC cooperate with the University in allowing it to undertake an

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independent analysis of the academic fraud data. We thinks it might be good for St. Lewis to define independent here. Let's see. St. Lewis main recommendation is for the University to access and evaluate the SAC data that students have provided the SAC. Wow, and this would not have a chilling effect on students' willingness to pursue their legitimate claims, as St. Lewis suggests is the effect of the SAC report? So, after all this, according to St. Lewis, the best thing to do now, since it's obvious that there cannot possibly be systemic racism at our U of O, is to get that SAC data and shred it so it can't hurt us anymore. Brilliant. I predict that St. Lewis is in line for a promotion to associate professor soon."

What do you have to say about that, Professor St. Lewis?

A. At - the idea that I would shred the data, for me as a lawyer, is the equivalent to telling me that I would destroy evidence, that there would be evidence of something and I would actually participate in the destruction of evidence, one. Second, to actually so distort my recommendation around data, it, it - it's just to me seemed to be such a personal kind of attack. It was

so upsetting and insulting and I couldn't see how that bore a relationship to what I had written, like the, the, the tone, the content, the sarcasm that's, that's imbedded in how it's being expressed, that's what I felt. I felt
5 someone who really had no respect for me as a colleague of the institution, at this point, he's still a colleague. He's in another department. He clearly has a problem with my report. He doesn't write me an email in a collegial way and say, "Dear Professor St. Lewis, I've got a
10 problem." Instead, this is what happens. He, he writes this and just puts it into the public domain in, in this way. So, when I'm reading it in 20-11, at that point, I'm realizing, oh, my goodness, it's been sitting out there. It's been sitting out there for, for a couple years
15 because in fact, part of the reason I ignored it, I didn't know what it was. I don't know what I would have done then, but I simply know that I was shocked when I read this. I was shocked at the language, the tone, the suggestion, and I certainly know that you can't read from
20 my Recommendation 1, conduct an independent evaluation, cooperate what I meant, which is, let's have stable data between the two groups, let's have a conversation about what we mean by Asian, what do we mean by black - these things are important details, actually. You can't have
25 each group having their own idiosyncratic identity. You need self-identification forms, all - that's what I was thinking as a person doing systemic racism about process, and it became something very warped in this
30 recommendation. So, I was actually quite stunned, and to be honest with you, I was quite shocked that it came from another professional, another academic, that this was the

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way in which my report would be characterized.

THE COURT: We'll take a break for 15 minutes
now.

MR. DEARDEN: Thank, Your Honour.

...JURY EXITS THE COURTROOM (2:27 p.m.)

R E C E S S (2:27 p.m.)

U P O N R E S U M I N G: (2:47 p.m.)

MR. DEARDEN: Your Honour, two logistical things.
I just wanted to make a note though. I'm just
trying to scope out next week, which clearly, the
evidence is going to be in next week, Your
Honour. So, we have - I'm not gonna finish
Professor St. Lewis today but we're putting
Camille Nelson from Boston on the stand Tuesday
morning and then Professor St. Lewis after that
and it could take the rest of that day. It may
not but then I have Allan Rock, Robert Major,
Bruce Feldthusen, I have a number of witnesses,
any way and I'm wondering in terms of looking at
this calendar if we got the evidence in the 20th,
the 21st, 22nd and I did a closing on the 23rd
and Your Honour did a charge on the 26th unless
Your Honour thinks you can do a charge on the -
'cause one of the...

THE COURT: No.

MR. DEARDEN: Yeah, the 26th, not to mention I do
have questions.

THE COURT: Yes, I will ask you to at least
prepare draft questions so I'll take a look at

them.

MR. DEARDEN: Oh, I have and it became a lot less complicated without defence's in there. So, but I'm alerting Your Honour that the questions are, you know, each question's gotta deal with each meaning on the eight passages. So, there's something like 50, are these words defamatory questions? So, it's gonna be a thick book. And then, the malice question would be one, just one question and was the Defendant - was there actual malice on the part of the Defendant? And then just one page of damages, you know, generals, aggravated, like three lines. So, but I wanna finalize those. So, I'm - that's what I'm thinking in my head. Now, I know you're not sitting the 28th and you never know how long a jury's gonna deliberate. Does that cause a problem if they're still deliberating on the 28th and you're not sitting?

THE COURT: I can't be here on the 28, 26 and 20 - 28, 29 and 30th. That's the problem. So, maybe we'll have to - yeah, I see what you're saying. If they're still deliberating.... Mm. I don't anticipate - if you take the week next week, I.... Well....

MR. DEARDEN: The charge, Your Honour, is gonna have to be detailed in terms of the reference to the evidence and I'm gonna do my best to be pretty detailed and for them to what exhibits...

THE COURT: Mm-hmm.

MR. DEARDEN: ...they should be paying attention

to, in my submission but it's - you have a lot of work and I have a lot of work.

THE COURT: Yeah. So, it may be that we should - if you're finished next week, we may have to jump over the following week.

MR. DEARDEN: Like I do my closing the second and...

THE COURT: Well, we could take your closing on the 26, 27 and I could give my charge on the Monday following.

MR. DEARDEN: Would you - my preference, Your Honour, would be to do my closing pretty close to your charge and I would love the time to - 'cause...

THE COURT: Yeah. Sure. Because that's a real problem. I mean I want to be here when the jury's deliberating. They may have questions, et cetera and I know for a fact, that's why I told both parties, at the time, I will not be here. I'm not available for those days.

MR. DEARDEN: Yeah.

THE COURT: That - if I was simply doing something else in another court, I could come back for questions but that's not the situation.

MR. DEARDEN: Then, I'm content, Your Honour, with doing the closing on the 2nd and...

THE COURT: Charge on the 3rd.

MR. DEARDEN: ...you do your charge on 3rd and I also thought it might be good news for the jury to hear that they're not gonna be tied up for four or five weeks in light of the circumstances

of today.

THE COURT: Yeah. I think I'll wait just a little bit before I - next week some time, I'll obviously tell them that and see how it goes.

MR. DEARDEN: Okay. And the other logistical matter, Your Honour, is Don Butler from the Ottawa Citizen just had a - he was not here this morning so, he didn't witness what happened. He didn't hear what you said about the non-publication of Voir Dire and he just has a question, a clarification for you.

DON BUTLER: Thank you, Your Honour. I'm just looking for your direction on your non-publication order from this morning.

THE COURT: Yes.

DON BUTLER: I was not here, as Mr. Dearden said, and I didn't hear what Mr. Rancourt said in the absence of the jury. He has expressed a willingness to be interviewed to me and I'm wondering if he were, in that interview, to explain his reasons for withdrawing and that was reported, would that, in effect, violate your order?

THE COURT: Yeah, I suppose not but I'll hear Mr. Dearden but I suppose not because then what's important? Obviously, the jurors have been told not to, you know, to get online or read papers but - and they probably will but that's not the point. They - it's more what is in the courtroom. Now, what has been said - what is said afterwards by Mr. Rancourt, I don't see -

5 I'll hear from you, sir, if you have something
else to say but I don't see - obviously, Mr.
Rancourt seems to have a very - an idea of why he
wants to do that but I - we can speculate but I
don't see how I can prevent the publication of
what he says outside the courtroom about why he
did that. Do you have any submissions against
this? That's my off the cuff but I'll certainly
listen to you if you - listen to your comments,
if you have another idea?

10 MR. DEARDEN: I would be in a serious conflict of
interest, Your Honour, 'cause I act for Mr.
Butler in the Ottawa Citizen on open court
matters for 35 years. So, I really can't make
any submissions on that.

15 THE COURT: Yeah. No, that's fine. What Mr.
Rancourt chooses to do from now on is up to him.

DON BUTLER: Thank you, Your Honour.

20 THE COURT: All right. All right, call the jury.

CLERK REGISTRAR: All rise.

...JURY ENTERS THE COURTROOM (2:55 p.m.)

CLERK REGISTRAR: All members of the jury are
present, Your Honour. You may be seated.

25 THE COURT: All right, let's proceed.

MR. DEARDEN: Thanks, Your Honour.

30 MR. DEARDEN: Q. Before the break, we were
dealing with Mr. Rancourt's December 6th, 2008 article in
U of O Watch at Tab 18, Professor St. Lewis, and the last
paragraph of that U of O Watch article says, "I predict
that St. Lewis is in line for a promotion to Associate
Professor soon." And what do you have to say about that?

5 A. Well, it was snide and unprofessional and simply not true. I, I, I wasn't awaiting some kind of reward from the University. There was no connection between my doing the report and expecting any kind of professional - sorry, professional advantage.

10 Q. And when you were providing testimony about how he rephrased and commented on your recommendation, you mentioned something about Ms. Gervais admitting - what was it, that her - that the SAC report was what?

A. Unscientific.

Q. Okay. And you were referring to her saying that where?

15 A. She said it in public and in interview with the media. I've just...

Q. Okay, that's...

A. ...got something in my throat.

Q. Catch your breath.

A. I'm sorry.

20 Q. Do you have water?

A. I do. Just a second. I'm surprised. I'm quite the talker, and yet I feel a bit all talked out.

Q. Okay, so Tab 17...

A. Yes.

25 Q. ...there is a Ottawa Citizen article, "No Proof of Systemic Racism at U of O", November 25th of 2008. So, right the day that your...

A. Yes.

30 Q. ...report was released probably by the University and what are you referring to?

A. Okay. Okay, I'm, I'm turning to page two

of that press release, the one that has the number 24 in the upper right-hand corner, and so the, the top of it is the exchange, vice-president, governance and there's an exchange, and then it has the press article from the Citizen. So, on page two of that article, when you're reading - Ms. Gervais is commenting on my criticisms and the second paragraph, she says, "It's a typical institutional response to deny the problems we are witnessed to on a daily basis, she said, adding that the report is not scientific, but based in the Centre's experience meeting with hundreds of individual students." So, she herself admitted that and, in fact, the academic fraud instances are 44 to 48 in the report. It's not even hundreds. So, there's that kind of exaggeration, though I think what she was referring to is her number of 383 for the general issues of abuse, but both of them tended to collapse those two figures in the public statements about the academic fraud instances.

Q. Okay. So, I want to get into a bit of Mr. Rancourt's conduct since you served him with Notices of Libel in May and the Statement of Claim was issued in June of 2011. So, just generally, can you describe the impact of - that Mr. Rancourt's conduct of his defence the past three years has had on you?

A. One of the difficulties has been not simply the time in terms of what else I think I could have been doing with my life, other than this case, it's that in the pleadings, in how he spoke about the case, in going to court and sitting there, because I'm, I'm always silent. My counsel is talking, Mr. Rancourt is talking. He continually said that there was no basis to what I was

saying - repeated statements that I was experiencing no harm. There's no damages, there's no harm. This is about reputation. I, I don't quite understand how he was understanding those concepts, but the idea that saying
5 such a hurtful thing about someone and writing these kinds of things that go to someone's professional integrity, not being harmful, I never understood, but for me, it's an accumulation. I - how I would describe it is, it's a phrase I've used to try and explain how multiple instances
10 of racism affect people. Whether you've got a ton of feathers or you've got a ton of bricks, you still have a ton. So, the issue isn't what any one instance is. It's that they were all layering on top of me, one after another, over those - these three years, and each blog
15 post, each blog after a court appearance was a problem, and often his blog post affected and stimulated other kinds of media and responses by other people. So, it sometimes felt like a kind of cluster bomb of information about me, tying me back to being called a house Negro,
20 happening where his behaviours in court and his statements of - in court would trigger these kinds of behaviours. So, it was really - I found very, very difficult. I mean, I was trying to continue to have my professional life, to be able to go into my classes, to teach, to do my work, to
25 try to do some of my projects, but as this mounted, it was challenging, you know? I, I was more and more - like things would happen and I, I was feeling more and more uncomfortable in situations that were never uncomfortable for me before, and also, as I say, I'm in court, there's
30 some reporting about it. I suddenly have people again asking me, not just about the court case or the court

decision, but really about, well, somebody's called you a house Negro. I was back into that conversation. I couldn't - I just never was able to escape it over the three years. I, I never had - I would've given anything to have a, a month with - just a month where nothing happened, like that I was just, you know, anonymous and not this person through this internet personality, but it, it just never let up. Sometimes, the pace was stronger than others, but it just never let up. It was constantly in motion, constantly hearing the same kind of iteration of the case. It's just difficult, just hard.

Q. And I want you to provide a couple of examples of the way Mr. Rancourt defended himself since you sued him and let's start almost in the beginning, September of 2011. I was doing a cross-examination of Mr. Rancourt and another professor at the University named Claude Lamontagne, and why don't you describe to the jury what happened that day when I was about to begin to cross-examine Mr. Rancourt on one of his affidavits.

A. Actually, it was quite incredible because the, the cross-examinations are private and I'm in the cross-examination and to describe the space, these are - these are small rooms when you're with the court reporter. It's really the two parties and the person who's recording the, the cross-examination as the case may be, and there were three strangers in my cross-examination and I had seen those three strangers when we were coming into the building, talking to Mr. Rancourt. When my counsel said to them, "Who are you?", the three strangers refused to identify themselves. They said they had a right to be there, which they didn't, and suddenly I have these three

people I don't know - the only way for you to even know where an examination is taking place is one of the parties have to tell you, 'cause it could be happening in the court reporter's office or in, in a law firm office, and I'm looking at these people. As - we went ahead, right? We went ahead with the cross-examination, and there are these three people just staring, staring at my counsel, staring at me - I don't know whether it was there to intimidate me or to embarrass me in some way to suddenly have these strangers there, but that's how I felt. I felt definitely very uncomfortable. I was disturbed that they wouldn't identify themselves and even say why they were there. After this happened, there was a - we had a case man - we were in front of the master, we had a case management opportunity. We talk - this was raised. There was an order that said no, these are private. These people are not allowed to attend. In other words, members of the public are not to attend these cross-examinations, which is for everybody. I wasn't asking for something special. Mr. Rancourt did a motion, called this motion the open court principle, and I'm in court on a motion about the right of strangers to attend the cross-examinations in my case, and during that cross-examination - during that motion, Mr. Hickey, who was a friend of Mr. Rancourt, puts forth, you, you know, saying I, I have a right as a part of the student media to be there, to, to speak in this way, and he's a partisan supporter of Mr. Rancourt, and, and the judge said directly in the case that, you know, there's no difference between your perspective and Mr. Rancourt's perspective, and that was rejected, but I'm saying, that's time. That's - you know,

when, when you're going through these different motions on things that should be settled or shouldn't be - it's time, right? And when they're about those kinds of behaviours, it's just wrong. It's just wrong, but that, that was just one example of, of that happening, and that was early. That was in, in the fall, shortly after I filed my, my Statement of Claim and we'd begun the action.

Q. So, Tab 20 is a transcript of the first part of that cross-examination of Mr. Rancourt. So, Tab 20 of the Book of Exhibits, Volume 2...

A. Yes.

Q. ...okay, is a cross-examination of Denis Rancourt, September 6, 2011.

A. Yes.

Q. And if you look at page two...

A. Yes.

Q. ...I - and it's questions...

THE COURT: I'm sorry, I'm not following where you are now.

MR. DEARDEN: I have Volume 2, Your Honour, of the Book of Exhibits of Professor St. Lewis, Tab 20.

THE COURT: Volume 2...

MR. DEARDEN: Book of Exhibits.

THE COURT: ...which is Exhibit 2.

MR. DEARDEN: Yes.

THE COURT: Tab 20.

MR. DEARDEN: Tab 20.

THE COURT: Okay, now I am.

MR. DEARDEN: Q. So, it's...

THE COURT: Now, I'm following.

MR. DEARDEN: Q. ...a portion of that cross-examination that I was conducting of Mr. Rancourt, I say to him, at Question 2:

"Mr. Rancourt, before you were served with the Notice of Cross-examination in this matter, we had an exchange where I told you that members of the public were not entitled to attend this private litigation between you and Professor St. Lewis. I am seeing three people - two males, one female, sitting at the end of the table who I do not recognize, and you know these people.

Answer: They are members of the public.

Do you know these people, sir?

I refuse to answer that question.

I am asking you, sir - I don't know your name, so I'm not being disrespectful, but what is your name?

MALE NUMBER 1: If you can give me authority of speaking on behalf, I can give you my name.

I'm sorry?

If - MALE NUMBER 1: If he can give me the authority of speaking on my behalf to ask me my name.

I still don't understand that.

Mr. DEARDEN: I am counsel for Joanne St. Lewis, the Plaintiff in a libel

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action. You are in a cross-examination that is private. I'm asking your name.

MALE NUMBER 1: I'm asking you to show me the authority representing not the client.

Mr. DEARDEN: You are getting all of this, Madam Court Reporter? And I'll ask the second male that is sitting in this room, your name, sir?

MALE NUMBER 2: I am a member of the public. I am here to observe.

Mr. DEARDEN: You are not going to give me your name? Pardon? The transcript doesn't pick up motions, which you were sort of putting your hands out.

MR. RANCOURT: Mr. Dearden, I'd like to interrupt for a second. I'd like to object."

And I say, "No, I'm not letting you. I'm asking who these strangers are in this cross-examination.

MR. RANCOURT: I'd like to object to what you're doing.

Mr. DEARDEN: Go ahead and put it on the record.

I'd like to object. I don't see - I believe that the public is entitled to attend here.

And you are wrong.

5

RANCOURT: Well, we can discuss that, but at this time, I don't see what authority you have to invade their privacies as member - members of the public by asking them their name and I don't see what relevance that has to the point you're trying to make about whether or not they can attend.

10

MR. DEARDEN: Are you a lawyer for these three strangers that are sitting in the cross-examination, sir?

15

RANCOURT: I'm making an objection. I'm making an objection to what you're doing at this cross.

20

MR. DEARDEN: Madam, I'll ask you the same questions I asked these two gentlemen.

25

MR. RANCOURT: Can you explain the relevance of what you're doing?

MR. DEARDEN: Can you identify yourself, please?

30

FEMALE: I am a member of the public. So, you're not going to identify yourself either?

FEMALE: Not until you tell me on what grounds I must.

This - DEARDEN: This is a private litigation between Joanne St. Lewis and Mr. Rancourt. Cross-examinations and examinations for discovery are

not public. Now, Mr. Rancourt, I'm putting you on notice again that your conduct from the time you published the defamatory statements about Professor St. Lewis until there is judgment is relevant to the issues of malice, aggravated damages and punitive damage. Now, ask these people to leave, please.

MR. RANCOURT: I understand the notice you've just put me under. I'd like to - this is an issue of whether or not the public can attend and I'd like to give you a copy of this email exchange we had on that very question, which I brought a copy for you here and the last email I sent you on this matter was as follows. It was sent September 1st, 2011. You had affirmed in a previous email that the public was not entitled to attend here, so I responded in this way. I said, please provide a case law, decision or rule or succinct legal argument regarding your position. My considered position is that the public - is that, sorry, my considered position is that this is public, but I'm open to hearing your reasons beyond simple affirmation, because your reasons, because this

5 affirmation appears to be contrary to
the principle of a just and public
hearing process. Now, cross-
examination is something that we,
we'd normally only do at a trial, but
because this is a motion, the process
is simplified. So, this is part of
the trial process for this motion,
and I believe it should be public.

10 Can you please provide your argument
as to why this is not the case?

15 MR. DEARDEN: I don't have to provide
you any argument, sir. We're in Room
10 at Cornell Catana conducting a
cross-examination and they are done
without the members of the public
present, okay? I don't have to argue
with you, sir. I'm not gonna argue
with you. Tell them to leave,
20 please.

25 MR. RANCOURT: Okay, I wanna make
another point. I'm not arguing, I
just wanna say that I want to
cooperate, but I want to understand
why you are affirming this. I
understand that you are saying, in
your practice, you have not admitted
this previously, if that's what you
are saying but I want to, if you
could just explain how it is that
30 this is not public because your

affirmation doesn't seem reasonable to me.

MR. DEARDEN: I don't care, okay?

The transcript of this cross-examination, if it's filed as part of this motion that we brought to compel you to attend a mandatory mediation and to appoint a mediator will then be subject to the open court principle but not until then.

Members of the public are not entitled to be sitting here right now during this cross-examination on your affidavit, okay? So, I'm giving you one more opportunity to tell them to leave.

MR. RANCOURT: They are independent members of the public. They can make their own decisions.

MR. DEARDEN: You brought them here. Tell them to leave.

That's your characterization.

You were standing out front of this building when I came into this building with these people, and you were chatting up. You brought them here. You alerted me to the fact that you were going to bring four or five people here and wanted a big - a room big enough to have them sit in here and I told you, you couldn't do

Joanne St. Lewis - in-Ch.
Voir Dire

that.

RANCOURT: I didn't bring them here.
They are independent members of the
public.

Are you gonna ask them to leave?

RANCOURT: I don't take orders of
that type.

DEARDEN: I wasn't ordering you. I
asked you to ask them to leave. Are
you going to ask them to leave, sir?

MR. RANCOURT: They are independent
members of the public. I think the
answer is clear.

DEARDEN: Okay. I'm taking it that
you are not. Now, here's the drill,
sir. I would normally walk out of
here now and I would be seeking costs
for re-attendance against you
personally but because of the urgency
in trying to get the mandatory
mediation held and because of the
urgency of that, I'm not gonna waste
time and money trying to get you to
understand that you can't have
members of the public in a cross-
examination or in an examination for
discovery."

So, Professor St. Lewis, what did you observe
when we were walking to that cross-examination and about
to enter the building where the court reporters offices
are? What did you observe?

5 A. We were on the street and as we
approached the building where the court reporter office is
located, on - outside the, the building, just where the
steps were, were Mr. Rancourt, the professor, and three
10 people. They were talking together. I didn't really
count all the persons but there were a cluster of persons,
and when we were in the cross exam - cross-examination, I
recognized those persons as the persons who had been
downstairs speaking to him outside the building at the
10 bottom of the steps.

Q. And who were the two men? Do you know?
The two...

A. Now?

Q. ...the two males that....

15 A. Right now, do I know who they are?

Q. Yeah.

A. One was Mr. Joseph Hickey.

Q. And is he here today?

A. Yes, Mr. Hickey is sitting over there in
20 the first row on the side - on the other side of the
courtroom, and I believe the other person was Mr. Alroy
Fonseca.

Q. And what involvement does he have with
Mr. Rancourt?

25 A. I believe Mr. Alroy Fonseca - there's a -
helps organize and structure the blog that is
academicfreedom.ca. Mr. Rancourt has a number of
different blogs but I believe that particular blog is the
one that Mr. Fonseca provides him with some kind of
30 technical advice support for because that's the context in
which I saw his name.

Q. Provides who with technical support?

A. Eh?

Q. Provides who with technical support?

A. Mr. Rancourt...

Q. Right.

A. ...with regards to that particular website. I'm not able to say he's the Webmaster or the specific role he plays but he does have some kind of role in, in that website, at...

Q. And...

A. ...least at the time when I was trying to figure out who had attended the cross-exam. I was highly motivated to figure out who had been in the room.

Q. And who was the female?

A. The third person in the room was Professor Adele Mercier, who I now understand is a professor - Associate Professor at Queen's University.

Q. Is that the same Adele Mercier that Mr. Rancourt mentioned in his opening address yesterday?

A. Yes. Adele Mercier - Professor Mercier is - was identified by Mr. Rancourt as one of his experts.

Q. And did they - those strangers ever leave that cross-examination?

A. No. That was the problem. As I said, we were in a really small room. I mean, you're practically sitting cheek by jowl, so I was like almost - you know, you have a table, but you're really close. So, that's why it, it heightened how uncomfortable it was but they really never left. They, they had this position that they were members of the public. They didn't have to provide any kind of information or identity and they certainly were

not going to leave and Mr. Rancourt was not cooperating in asking them to leave because he simply was not accepting that it was not proper. So, that entire exchange is happening. The other thing is, time. Time is going as we're having an exchange about a really fundamental principle that everybody knows and he's just resisting the information. Strange.

Q. And you had mentioned that we had to obtain an order from Master McLeod but what's a Master?

A. Oh. You're talking about someone who is similar to a judge but is making procedural rulings that are related to advancing a matter in the court, so not at the level of deciding facts and those kinds of things but you go to this individual for, for various questions, very specific questions that either side might have and those clarifications assist you to move the matter forward.

Q. Okay. Another example, an abuse of process motion that Mr. Rancourt filed that he alleged there - he was seeking to have your libel action dismissed by a judge because it was based on this archaic concept called champerty - a champertous agreement. So, why don't you tell the jury about what you went through from the date he filed that motion, which was January 2012, until it was finally decided by - at the first level of court, that's by Justice Smith in March of 2013.

A. When the champerty motion was initiated, first of all, I was - I was just struck because there isn't such a defence to the defamation action. So, I was having problems with what was about to happen and what Mr. Rancourt was essentially saying was that by bringing my claim, that calling me a house Negro of the President

of the University, I was the - was a frivolous and vexatious litigant, essentially. I was a person who was abusing the system. I was inappropriately doing so and the champerty and maintenance language was about the fact that there was something improper about my getting funding from my employer. So, as a lawyer, there was - you know, there was a layering on of what was being said about me by even bringing the motion. It was saying here I am not respecting the process, and on top of that, here I am inappropriately, because of the way he framed it, using or misusing public monies.

Q. Okay, let's just back up, because the jury don't have the facts of...

A. Oh, sorry.

Q. ...of all of this, so first of all, what's a - what's champerty?

A. I'm gonna have to go one step back and say what's maintenance, because champerty is something...

Q. Well, even one step....

A. ...you've got a law professor here. So, maintenance is the old English term we use where a person brings a lawsuit because they don't have a reason on their own. So, this other person says to them, "Hey, you know you have an opportunity to bring this lawsuit." The person says, "Well, I wasn't gonna bring it anyway." And they say, "Well, you know what, if you bring it, it'll be useful to me. It could be any range of reasons. It's useful to me, but it's called a - we say an officious inter-meddler." In other words, somebody horning in on an opportunity for their own use and getting this other person, who really might have some kind of a legal right,

to bring the claim, but the reason they brought the claim is, is not because of their own interest. It's because it's gonna help the other person to get at the other person. So, they're, they're sort of hiding behind the person who looks like a legitimate claim and using that to, to punish the other person. That...

Q. And who was the - who was the party that was supposed to be really the person that was bringing this action as opposed to you?

A. So, in my case, the description I gave, it would mean that I did - I had no interest in suing him for calling me a house Negro. In fact, I didn't - I wasn't affected by it. So, I was actually doing that to help the University punish him. So, my bringing my defamation action for the President of the University, calling me a house Negro, was not because I felt insulted or harmed in any way. I was simply doing it because it would be of assistance to the University and because they asked me to do that. So, that would - that would be the maintenance. That was the argument. Champerty....

Q. And what draws in the University in the facts here? The jury don't know.

A. Okay. Because when - if we go back to that period of time in 20-11 when I read the - I read the - that tag...

Q. The Google...

A. The Google search...

Q. ...the Google search item....

A. ...of my name, and I read that tag that said, "Is Joanne St. Lewis Allan Rock's House Negro?" I was able, within a couple days, to - I said I didn't meet

the Dean on that same day but I was able to go and speak to Bruce. So, Bruce Feldthusen, being the Dean of my law school, I talked to him about how I felt. So, when I sat with Bruce, I said, "I'm going to have to sue this person.", because I knew then that there was no way to get it off the internet otherwise. You can't - the way the Internet works is - it's not - you know, you have to be able to have some, some way of removing things and a legal decision is what you need. So, I knew I was gonna have to sue to get that outcome. We went - and I, I met with Allan Rock. That was April 15th, I...

Q. And why do you need Allan Rock? He's...

A. Because...

Q. ...President of the University. Why is he involved?

A. I - because I did my report in 2008, in my capacity as a University employee about something of interest to the University, I talked with my Dean and my view was, I was an employee of the University. I should be able to tell them that, that this has happened because of the work I did for you. I did this work for you and now this man, albeit he's not longer employed by the University, this man has said this about me and you have a responsibility to assist me to get this lie taken down off the Internet. So, I went to the University. I asked for that support and I received that support, in that meeting, but when I went with my Dean, we went - he was going there to support me because the support I needed was because I was really very upset, and so I didn't - it wasn't that I didn't think I should ask, it's that I was just so upset, I wanted someone to help me get everything out and get it

out properly.

Q. And do you recall the date that you met with President Rock, with the Dean to ask for financial support to bring this libel action?

5 A. I, I remember. It was April 15th.

Q. Of?

A. Of 20-11.

Q. Okay.

10 A. Bruce and I walked from the law school over together to the meeting.

Q. Okay. And when you were doing - you were doing your law prof thing explaining champerty...

A. Champerty.

15 Q. ...and maintenance, so let me have you finish that and then I'll ask you what reasons the University provided to Mr. Rancourt as to why they were supporting you as an employee.

A. Champerty is just - think about it as, as maintenance, what I described, plus. So, with, with
20 champerty, what you get is also an agreement to share in the proceeds of the litigation, in any way. So, it's not about a specific amount. It's just sharing in the proceeds. So, essentially he says, "Well, you were gonna bring the case anyway, so if you win damages, you're gonna
25 give me half or you're gonna give me a third, or whatever." but there's some kind of pre-existing agreement that involves sharing in the proceeds of the favourable outcome of the case that the other person has convinced that person to bring. So, between that outside person and
30 the person who brings the case, they wouldn't otherwise have brought, there's a financial agreement to share in

what the outcome is. So, that's what champerty means.

Q. So, Mr. Rancourt was provided reasons by the University's lawyer, David Scott, as to why the University was supporting you as an employee and we'll find that at Tab 22 of the Book of Exhibits.

A. Yes.

Q. It's a letter of October...

A. Yes.

Q. ...25, 2011, and it says - why...

A. The letter...

Q. ...why don't you read the...

A. ...the letter...

Q. ...first paragraph.

A. ...provides two main reasons and the reason is really contained in the third paragraph is the bulk of it.

"Indeed the University of Ottawa is reimbursing Professor St. Lewis for her legal fees incurred in her defamation proceeding in the courts against - [This is a letter to Mr. Rancourt.] Your defamatory remarks about Professor St. Lewis were occasioned by work, which she undertook at the request of the University and in the course of her duties and responsibilities as an employee. Her efforts were not personal, but in the interest of the University. Furthermore, your outrageously racist attack upon her

5 takes this case out of the ordinary
and in the view of the University,
alone creates a moral obligation to
provide support for her in defence of
her reputation."

Q. And what was the outcome of
Mr. Rancourt's abuse of process motion that tried to have
your libel action dismissed or stayed because it was based
on a champertous agreement?

10 A. The decision of Mr. Justice Smith, the
Ontario Superior Court, said that it was not champertous
because - and to just explain what was the sharing of the
proceeds. I don't think I explained that in my case.
15 When I did my, my statement of claim, in the punitive
damages section, I said, half the punitive damages, if
there were any, should go to a scholarship that I had
created at the University for black students and he said
that that was an indication of the University sharing
possibly in the proceeds. So, Mr. Justice Smith said no,
20 there was nothing improper in the University providing
the, the monies to support her legal - to pay for her
legal fees, and he also said that there was no champertous
agreement, that the putting of the monies into the
scholarship, that entire line, he found as a fact because
25 I did it when I was drafting the statement of claim. I
never consulted the University and he found that as a
fact, that I had not consulted the University. It was not
at their instigation, that that had not happened, and in
fact, in terms of the finding about the maintenance, he
30 said the same thing, that by the time I got into the
meeting with Allan Rock, I had already made the decision

to sue, that all the evidence of all the witnesses in the champerty, who included at that time myself, Dean Feldthusen, President Rock, one of the council, the junior council on the arbitration. So, all of us - he found that all of us were credible, that we all said the same thing, that I had had my own mind made up to sue, and that I had, I had independently determined that I wanted the punitive damages to be shared with the student scholarship and even so, monies into a student scholarship is not sharing in the proceeds in the, in the way it was understood. The matter then went to the Ontario Court of Appeal. The Ontario Court of Appeal said there was ample evidence on the part of Justice Smith to make each and every one of the findings...

Q. Who took it to the Court of Appeal?

A. Mr. Rancourt took the decision that was not favourable to him to the Court of Appeal.

Q. And what did they decide?

A. And they decided that Justice Smith had ample evidence before him to make the findings and they completely upheld, in every way, the decision made by Mr. Justice Smith. So, then Mr. Rancourt sought leave to appeal at the Supreme Court of Canada. So, this is where the time went. Like so we then had to wait for the matter to be heard at the Supreme - the leave, the leave application, to get a decision back from the Supreme Court of Canada. In that leave application, I don't know how to - how do I put it, as this is happening to me, it's - to me, by the time we get there, the, the Supreme Court of Canada decision isn't until this - just this past March, like, you know, it's like I'm...

Q. And the motion was filed January 2012?

A. Yes, so...

Q. And leave to appeal denied March 2014, so
over two years.

5 A. So, all the time that this is happening,
they're blogging. They're, they're doing all of this
online activity and there's nothing I can do about it
because the only way I know to get at it is to get to
trial. I need to get to trial so that I can say what's
10 happened and get something done, and so it was like this
free for all, with on top of that, the champerty motion
itself and the conversations about the champerty motion
reinforcing this notion that I had done something really
inappropriate. So, the blogging is - the blogging is
15 saying that, that I've engaged in this unprofessional,
unethical conduct. I'm a party to it. Obviously, I'm the
one who asked for it, that I lied when I said I made an
independent decision was sometimes explicit but certainly
implicit in everything that was said. Basically, I was
20 some kind of stooge for the University and I didn't know
my own mind. In the midst of it was also the suggestion,
what, I, Joanne St. Lewis, as a black feminist, I see the
word house Negro - what, I don't know what it means? I
need somebody to tell me, "Oh, by the way, this is a
25 racist insult." So, you know, maybe you wanna sue. Like
the whole thing was like crazy making for me, and so every
time he's making these arguments, he's talking about the
same sets of things and I'm sitting there, for two years,
through all these motions. There was something like 14
30 sub-motions attached to the champerty motion alone. There
was a lot of - like there was a lot of stuff happening.

Q. And it took a long time?

A. Very...

Q. Now, you swore...

A. ...long time.

Q. ...a barrister's...

A. Very long time.

Q. ...oath.

A. Yes, I did.

Q. And that is found at Tab 23.

A. Yes.

Q. And what was the significance of having Mr. Rancourt claim that your libel action was an abuse of process based on a champertous agreement?

A. It basically meant that the oath I swore, as a barrister, I had broken my oath, and what you'll see, this is actually the older style of oath and in fact, I'd sworn twice. When I was called to the Bar in British Columbia, my oath contained this language and when I was called to the bar in Ontario in 1997, this is the language. The language has changed now.

Q. Which oath is this one...

A. I'm looking at the...

Q. ...that we're looking at?

A. ...barrister's oath and if you count down one...

Q. No, which Law Society?

A. I'm talking - this one belongs to the Law Society of Upper Canada and this is...

Q. Okay, Ontario.

A. ...the oath I - Ontario, this is where the oath I swore in 1997. So, if you count down one, two,

three, four, five, six lines in the "you" - the sentence starts midway. "You shall not be guilty of champerty or maintenance." When we do our oaths, it's not an administrative thing where somebody sends you a piece of paper and you sign off. For our call to the Bar, our ability to have the permission to practice law, we have to be present in front of the senior members of the profession and orally speak the oath. We actually swear or affirm, and we say the oath, you know, so for me, what may have been a stratagem for him, I was feeling that I knew that it was saying that I had broken the oath I had give - said publicly in front of my colleagues and senior members of the profession that I was actually doing something that I was not permitted to do, explicitly not permitted to do and the, the other level of this for me is, as I mentioned before, I had become a bencher of the Law Society of Upper Canada and I was a bencher for eight years and I described that one of the things that we do is we have a role in determining how people become admitted to the Bar. So, this oath, I had administered the oath. I myself, later on, became one of the people on the stage administering the oath to hundreds of people in the audience, you know, this very thing. So, the, the level - what it suggested about my ethics and the profound level of hypocrisy about it, not only did I swear it, but I did - I had the temerity to administer it to other people and then in my own life, when faced with the circumstance, obviously, it was like tissue paper to me. That was the suggestion. That's how I felt, that it was saying to colleagues, I know the words champerty and maintenance are not something that, you know, everybody speaks about, but

I know that people in my profession and colleagues know what it means. And so, it was saying something about me in my professional world. It was saying something in fact very damaging about me in that context, and I lived with that champerty action happening for over, over two years. Over two years.

Q. Now, you mentioned pleadings. Perhaps you could tell the jury what you mean by "pleadings"?

A. Pleadings are the various documents you file to set out what your request is. So, a Statement of Claim is pleadings, Statement of Defence - these are written documents. You're going on a motion, but you have to say to the Court and put down in writing, what is it that you're asking for, what, what is - what's the kind of remedy you want. So, it's those legal documents that are written and filed in the court around a range of requests that you might be making, which would include the champerty motion, and as I said, things like the Statement of Defence, the Statement of Claim, and those kinds of things. Those are pleadings.

Q. Okay. And in - at paragraph 24, we have your state - Mr. Rancourt - part of Mr. Rancourt's Statement of Defence...

A. Yes.

Q. ...and in paragraph 61, for instance, under Government Entity and Third Party Involvement Charter, Mr. Rancourt pleads that in the alternative or as a preliminary matter, the legal action is improper. That is your libel action is improper because it constitutes an action by direct or indirect proxy involving one or more institutions or groups and government funds, or improperly

used or attributed funds and/or resources. So, the words - you know, reading this, Professor St. Lewis, that your libel action is improper and it's for a - and it's a proxy, what do you have to say about that?

5 A. It's - the words are clear on their face to me. They're telling me I'm dishonest. They're saying I'm willing to actually allow myself to be used to misrepresent what should - what's really happening to the public. That, that's what it's saying, that I'm doing -
10 that's what a - at a proxy, in this context, is I'm standing for the University and I'm allowing myself to stand in for something else that's going on and that really was his, his view, and, and the part that's more disturbing, it's not just it's - I'm standing in for a
15 proxy, but there's actually, as it says, government funds, inappropriate use of money or resources, and that I'm part of that. I, I'm - in fact, he's saying that about me because it's his defence against my Statement of Claim in the defamation action. He's saying this is one of the
20 things that she has done, not just the University has done, but I'm the one who's letting this happen to me. So, I'm responsible for that. I'm a part of it.

 Q. Okay. And another example - we're almost done, that last example, Tab 25. So, this is a - what we
25 call a factum, this one by Mr. Rancourt, involving Mireille Gervais. So, a factum is just written arguments, is a way to put it, but there's extracts of this factum, paragraph 3 and paragraph 24, Mr. Rancourt, says - you'll see in the second sentence of paragraph three, "The
30 purpose of the said affidavit...", that's Gervais' affidavit, "...is to establish that the Plaintiff made

false sworn statements." And if you turn the page to paragraph 24, Mr. Rancourt has submitted in this public document:

"The sworn and hard exhibit evidence of the Defendant's affiant, Mireille Gervais, shows that the Plaintiff repeatedly made false sworn statements on May 1st, 2012, regarding a meeting, which the Plaintiff incorrectly alleges took place between the Plaintiff and Ms. Gervais."

So, Professor St. Lewis, what's your response to Mr. Rancourt's statements here that you repeatedly made false sworn statements?

A. It's just incredible, you know. What he's talking about is my believing, saying, experiencing - my meeting with Mireille Gervais and writing Recommendation 1. Mireille Gervais had a different recollection. She said that meeting didn't happen. That's what he affidavit swore to. They don't write an affidavit saying, we have a difference of opinion with you. They say I made false sworn statements about that meeting happening, that it never happened, and that I was willing to keep repeating that it had happened, and in doing so, because I, I was under oath in my examination for discovery, that was me making repeated false statements. That's what they're talking about. That recollection of that meeting, whether that November 14th meeting with Mireille Gervais took place.

Q. And impact on you as a lawyer to have

this document sitting in the public court file here, to have him, Mr. Rancourt, accuse you of making repeated false sworn statements, what's the impact on you as a lawyer?

5 A. So many different levels. You know, I - as I said, I've been a benchler, I've been part of the governing body, tasked with interpreting our rules of professional conduct. In other words, tasked with, with interpreting the standards for other members of my
10 profession for eight years on what was ethical behaviour, and here's a document saying not just once, because paragraph three is about once, but then he's talking about the same thing in paragraph 24, repeated sworn statements. Doesn't even say exactly what - but repeated sworn
15 statements that I am - I have lied over and over again under oath. Absolutely, positively incredible. And as this is going on, she's his affiant, and his affiant did not want to be cross-examined. Okay? Shades of the other thing, so we've - she's a graduate of the Civil Law
20 program. She's filed a voluntary affidavit to assist him in his litigation, and when we say, okay, you've said this, we wanna cross-examine you, she doesn't wanna be cross-examined. All of a sudden, we're again down the rabbit hole, you know, it's like an Alice in Wonderland
25 experience, we're down a rabbit hole where she's asserting that she, she has a, a different order of right that doesn't exist in law. We have to argue it in court. The Court has to say, you're right, yes, this is really - see Spot, Spot is a dog, but again, as that's happening, as
30 these behaviours are happening, they are - to me, they felt abusive, okay? That's what they felt like to me,

that there was a constant manipulation of motions and different things to stretch the time before I could get to trial, and also to place in that space an opportunity to continue to damage my reputation because things - it was
5 always a moving target. It didn't stay there. They blogged about it. As Mireille Gervais was refusing to subject herself, as she saw it, to cross-examination, which was our legal right, she did media interviews. So, fascinating - she's not wanting to come under oath and
10 speak about this, but she's giving media interviews in the Student Media at the University of Ottawa. So, there's a conversation happening, not just abstractly, if somebody decides to go to the court file. It's happening in my place of work. It's happening - it's being published
15 right there in one of the student newspapers, a big page exposé. She's being interviewed. It's, it's - you know, if you think my students did not see that and did not have some questions, "Professor St. Lewis, what's this all about?" You know, really, really, it was, it was like
20 being under siege, you know. These things would happen, and they kept happening and then something new would happen and, and these are just three examples, but it...

Q. Now, let me just stay with the Gervais example. Okay? So, indeed we did compel her to have to
25 answer questions and she was ordered herself to pay costs, which was how much?

A. I can't remember - I think, was it six, no 3,000, 6,000? I don't know, I would need the document. I can't remember.

30 Q. Okay, three or...

A. I just know that it was a factor...

Q. ...6,000...

A. ...it was a factor of three.

Q. And who did...

A. That's all I remember.

5 Q. ...who did she say actually paid those costs? They were awarded against her personally, but who paid them?

A. Irony of ironies, her employer.

10 Q. Okay. So, that's the examples, some examples of conduct of the defence in this case. You have served additional notices of libel on Mr. Rancourt and if you turn to Tab 28 of the Book of Exhibits, Volume 2, let's go through them.

A. Yes.

15 Q. Okay?

A. Yes.

20 Q. So, Miss - on August 31st, 2011, 8:48 a.m., I email Mr. Rancourt as your counsel and say, "Your August 29, 2011 blog, attached, is defamatory of Professor St. Lewis and further aggravates the damages you continue to cause to her professional and personal reputation. I am notifying you to take down this blog." And that was "St. Lewis Files Motion To Force Mandatory Mediation, Rancourt Files Motion To Response." We don't need to get
25 into that, but what did he do about any - in response to this notice of - that I notified him to take it down? What did he do?

A. He did nothing.

30 Q. Next tab, Tab 29, I write Mr. Rancourt a letter, September 16, 2011, the paragraph two, I say, "Your September 12th publication adopts and endorses

Joseph Hickey's three latest particularly arcading blog posts, one of which is entitled, 'Lawyer Richard Dearden Attacks Self-Represented Witness, Case of St. Lewis v. Rancourt'." and let's forget the next line. The last sentence of paragraph two:

"The Joseph Hickey publication defames Professor St. Lewis and falsely states due to the serious evidence of corruption and fraud surrounding Professor St. Lewis' response to the Student Appeal Centre's 2008 report of systemic racism at the University of Ottawa."

So, what do you have to say - first of all, what did - did he do anything? Did he take it down?

A. No, he didn't.

Q. So, Mr. Rancourt provides a link to his supporter, Mr. Hickey, his partisan supporter, Mr. Hickey, who had written a blog that said that due to the serious evidence of corruption and fraud surrounding Plaintiff St. Lewis response to the Student Appeal Centre's 2008 report of systemic racism - so what's the impact on your integrity and your reputation, Professor St. Lewis, to be accused of corruption and fraud?

A. I - this was so troubling, because it was - there was a steady escalation in the language and the attack. So, this literally says, corruption and fraud. This is not the academic fraud because you said you're independent. This is just fraud and corruption. Like so I don't know what to say other than it, it was stunning, you know. I write a student report, and I keep coming

back to this. I write a student report in 2008. The students don't like my hard-hitting tone in saying that it's not scientific. The methodology is flawed. They actually agree. It's flawed. I support their
5 recommendations. It goes in as an advisory report. I am, in September 20-11 - this is escalating, you know. All of these things are adding up and, you know, it's, it's, it's just human nature. One thing that sounds maybe like an attack, but all of these blog posts? At some point, you -
10 you know, I know human beings. There must be some truth to it. Like how can there be all of this volume of stuff saying she's committed fraud, that she's, she's a - basically a corrupt person. There - it's just layering on and, and they - there's this constant linking back that he
15 does to his previous posts and they do to each other. It's just like - it was like a - to be honest with you, it felt like a noose, you know, kind of tightening around me, because I couldn't stop them and then they kept braiding it, tighter and tighter by adding one more blog post,
20 adding another blog post, adding another inflammatory way of describing me and it just went on and on and on. Like it's over three years. Just kept going and going and I didn't know him. Like this is the part that's really - I didn't know him and I wrote a report. It wasn't about
25 him. My report wasn't about him. It wasn't about professors. It was - at best, he's interested in students, I'm interested in students. That's the, that's the farthest I could take our link, right? And we have a difference of view on my report, but how that gets to
30 she's, you know - his willingness, to be honest with you, his willingness to link to these inflammatory blog posts,

those are conscious choices he's making to escalate what people know about me, to pour more gasoline on the fire. You know? In many ways, I saw as these things kept happening, particularly at this early point, that it really was an attempt to intimidate me, that feeling that if they - like it was like some form of public shaming, that if they kept saying these things, which were so integral to me as a person and they knew I was a law professor, that I'd just give up, you know? Like I'd just say, you know, how much am I supposed to take about my students hearing that I'm corrupt and you know, I lie under oath and all the things that, that maybe, you know, I just, I just have to walk away because, you know, obviously it's just too humiliating and too embarrassing to put up with it. It's - you know, I, I think what they were doing, it was wrong, it was bullying behaviour. I'm - I am a, a person who has the courage of my convictions. I felt that what they were doing attacked my dignity as a black woman, as a law professor, as a lawyer, and I decided I could take it, but you know, some of these things, they're like, they're so nasty. Talking about this, this is well beyond you have a disagreement with me about how some kind of policy should be administered within the University. This is so, so far out of bounds and to think that these are educated people, stunning to me, just stunning, stunning. And then to have - it isn't just the pleadings. It's that he kept repeating it, when he's standing up there, when he's standing up there in, in court and characterizing me, you know, in this way, and after a while, trust me, as an English Lit grad, that it started to fall trippingly off his tongue. It was just

like a - you know, I'm saying da, da, da, da, da, da,
because he's so used to saying it. So, it came off as
this kind of very ordinary thing he's saying and I'm
thinking, no, what, what you're saying about me is so
5 profoundly false, so profoundly hurtful and insulting and
I just - I sat there. Days on end, I sat there and I just
had to take it, 'cause I had no choice. I had - I either
was gonna give up and just say, oh, it's okay. You don't
have to be professional. You wanna criticize somebody,
10 just feel free to slam their characteristic - what does my
being black, what does my - what does any of that have to
do with whether you have a, a issue with my report? Zero.
No, no, no. We live in a different country than I know.
You can just do that. I can say whatever I want, and you
15 just have to suck it up, and oh, you've decided to tell me
that's wrong? I'm going to bully you, I'm going to
humiliate you, I'm gonna shame you, I'm gonna write about
it. I'm not gonna stop until you quit. I can make you
quit. That's what he was doing to me. That's what all of
20 them, these hangers-on of his, have been doing. That's
how it's felt to me, like they've been trying to shame me
into quitting, and I did not - I was not going to quit
because it's simply wrong. What he was doing to me was
wrong. He can't claim it has something to do with
25 interest in students. How is it even - let's put it
another way. How does it serve the interests of students
to vilify one of the only three black women on campus, a
person like me who's dedicated to the racialized students,
who's done so much for them, how does it help to strip
30 them of their confidence in me? How does that work? How
does it work for my community after all that I've done to

shame me, to shame me in public in this way, because I'm not just Joanne St. Lewis, I'm in these spaces as one of the first black people doing this. He's saying something about all of us, that we're not worthy, that I was not
5 worthy of the things that I accomplished. That's what he said. That's what he was saying. That's what I felt when he wrote these things and he had no right to do it. I'm telling you, he had no right to do it, and I wasn't gonna stop. There was just no way, no way. Yes, I, I - yes, I
10 sat in that courtroom and I listened to him and he talked and he talked and he, and he interviewed and he did all those things, but I'm a lawyer, and, and I, I don't go rolling around in the mud, the virtual mud of the internet, blogging back and forth. That's not who I am.
15 I'm a professional person. I wasn't gonna become the mirror opposite of him. It's - but I - it was like, it was like being in a weird, weird distorted place that I - like I felt like an animal in a trap sometimes. I'm just telling you the honest truth. I - especially as the
20 champerty motion kept going on and the blogging kept going on, I thought, I, I'm just - I'm never getting out of this. It's, it's just never gonna stop. This - he's not hearing - he's not listening. It's impossible. I'm not saying I felt that way all the time, resilient and I'm
25 being honest with you. There were days and there were nights, knowing that somebody thought I was corrupt and committed fraud, that strangers who knew nothing about me, that's all they were gonna see about me? Wow.
Incredible. Incredible, that they thought that was okay
30 to do, and that he took the initiative to link it. He's the one who's saying - he's accepting it when he does

that, and I thought, but I don't know you. I haven't said
a word about you. I've never insulted you, and you want
to destroy my whole public personality. You're smearing
everything I've accomplished in my whole life and you're a
5 stranger to me. Right? I didn't know what to do with
that. I, I've never experienced anything like that. In
fact, to be honest, I - I'd never really heard of anything
like that, like a stranger having such a preoccupation
with somebody else for something that wasn't even present
10 at the moment. I, I don't know. I, I don't know, I don't
know what to say, really. I just don't. It's just been
hard. That's all, just difficult. Just difficult.

Q. Well, the difficulties continue,
Professor St. Lewis, 'cause I'm gonna ask you now to turn
15 to Tab 30.

A. Yes.

Q. There are more take down notices. And I
don't know if I - I don't remember if I asked you this, on
that September 16, 2011 notice I gave him at Tab 29, did
20 he take it down?

A. No, he didn't.

Q. Okay. And then Tab 30, on October 11,
2011, I write Mr. Rancourt and say, "On October 9, 2011,
you published an article entitled, 'U of O Student Senator
25 Concerned About Any University Funding in St. Lewis v.
Rancourt Defamation Action'", and in paragraph two - well,
I said you adopted and endorsed a defamatory article
published by Joseph Hickey entitled "Gowling's Partner
Richard Dearden Suggests U of O was Paying for the House
30 Negro Case", nice title, and I demanded that he take it
down, and I said, "I put you on notice that failure to

take down your publication of Mr. Hickey's defamatory article constitutes malice and aggravates Professor St. Lewis' damage. You are also notified that - you are also notified that your October 9th publication is defamatory."

5 And did he take this one down?

A. No, he didn't.

Q. And the Joseph Hickey that's being referred to here is still sitting right over there in this courtroom?

10 A. Yes. He didn't take it down either.

Q. And then the next tab is 31, January 9, 2012, I email Mr. Rancourt and say, "Attached is my letter demanding you immediately take down your defamatory article of January 6th." And my January 9th letter was the next page at Tab 31. And I say, "You have published an article dated January 6, 2012 entitled, *en français*, *l'affaire* Joanne St. Lewis v. Denis Rancourt, Radio Co-op Media of Montreal, and the article publishes a link to the first part of your interview in which you further defame Professor St. Lewis. I'm demanding that you take down this article immediately. Your failure to do so will be used as evidence of your malice and your aggravation of damages you are causing to Professor St. Lewis' reputation." And did he take that one down?

25 A. No, he didn't.

Q. And this time, he's doing a radio interview for a radio show out of Montreal?

A. Yes, he is.

Q. And that affects you how?

30 A. One, at one level, it's just an expansion of the communities who are hearing his defamatory

statements about me. It's an escalation in terms of the media - it's not just a blog post. There's a different kind of listening audience from who might come to someone's blog than when you're actually doing an interview. It's a broader, more public - an indiscriminate - a group of people, a wider reach. It happens that I'm born in Montreal, and so now, in that context, I'm dealing with extended networks of friends and colleagues now being privy to his defamatory statements.

Q. And the next one is Tab 32, January 30th, 2012. "Mr. Rancourt, I attach a take down notice regarding your January 27th articles that contain another racial slur of Professor St. Lewis and seriously misrepresent the proceedings before Master McLeod held on January 26." Did he take that one down?

A. No, he didn't.

Q. Okay.

A. That, that one was in a different way troubling because this is the one where he actually suggested that I opposed bilingualism, in that, in that blog post and given that I am - that I am bilingual, that my father's from Trinidad and my father spoke seven languages and when I grew up in Montreal, we were actually - I was - we lived in French communities, not with our community, because my father felt language was important. My brother and sister are fully bilingual. They - from *jardinier* [sic] till Grade 10, they were in French school. They - my sister - like our family is so committed to this and for him - at a personal level, it wasn't just - he may have seen it as a stratagem, but he was saying - again, it was one of those, for him, a gratuitous salvo, but when it

hit me, he managed to hit something that was actually particular and personal to me, about me, about my family, about who I was. Bilingualism was never an issue because Mr. Rancourt's always defamed me in English.

5 Q. Sorry, I didn't catch the last part.

A. I said Mr. Rancourt has always defamed me in English. Everything that's happened, has happened in English. I didn't even have to think about it because all the materials you have, everything - except until this
10 latter time where he does this post - those 68 - his website is an English website. U of O Watch is almost exclusively English. Activist teachers, almost - it just didn't occur to me, but I was at a level personally offended at a blog post that would characterize my
15 feelings about language and imply that I would actually manage a case. It's like everything else, like I'm corrupt. It was like a never-ending stream of a new layer of something else I was getting - I was doing wrong, that I was unethical or unprofessional about, but they - it was
20 like a moving target, just kept going.

Q. And it did, because Mr. Rancourt has had communications with the media about you as well, and we'll turn to Tab 33 of...

A. Yeah.

25 Q. ...Volume 2. So, this is an email that Mr. Rancourt sends. I haven't counted all of the reporters that he sent this to.

A. There's about 70 on the page. This was sent after the filing of the claim.

30 Q. After filing the Statement of Claim, so...

A. Yeah.

Q. ...let me just put it on...

A. Sorry.

Q. ...the record, Professor...

A. I know I have to talk up.

Q. ...St. Lewis...

A. I'm sorry.

Q. ...that it's sent Thursday, June 23, 2011
at 9:39 p.m., and at the bottom, you see U of O Watch and
Professor Joanne St. Lewis, and then he offers himself up
to be interviewed by giving his contact information.

A. Yes, so he sent out to - like if you look
at it, these are all mainstream media, CTV, Globe - the
Globe and Mail. Like so it's a mix of print and
electronic media, some independent media, but he covers
all of the mainstream media and their main newswires in
this email to publicize that he's been sued so he can get
his version of the story out. It's - this was at the
start. So, we're going a bit back in time from where we
were with the notices, but it's - wow, you know, just -
CBC, just....

Q. Sun Media...

A. Yeah.

Q. ...Citizen...

A. And...

Q. ...The Star...

A. Yeah.

Q. ...coast to coast.

A. Mm-hmm.

Q. Okay. So, he sends this email out June
23rd, and if you turn to Tab 35, we have a June 24th, 2011

article by Tom Spears of the Ottawa Citizen.

A. Yes, he does - he gets somebody takes up that offer and the Citizen being a mainstream newspaper, obviously, I live in Ottawa, I'm right here. I can
5 honestly tell you that the next - from the time it came out, people were stopping me, colleagues were stopping me. I remember walking across the Laurier Street bridge and having a colleague - I wanna say colleague, I mean someone I barely knew who had recognized me from some professional
10 event, saying "Oh, I saw that article about you in the paper." So, even trying to leave the school to say, let me just get a breath of air, let me just put my - pull myself together here. There was no space because being in the Citizen just changed the level of the, the
15 communication about it and having called me a house Negro, it just was a different order of magnitude at that point.

Q. And when this person stopped you on the street and said saw the article, what article is he referring to?

A. He's referring to the Tom Spears article.

Q. And when you say, it being in The Citizen now and it is reported the statement that Rancourt made, the house Negro statement, is reported in this paper or in this article, as is Mr. Rancourt's interview...

A. Yes.

Q. ...but when you say it changed the level, what do you mean?

A. I mean that now, when you, when you consider the circulation of The Citizen, which is what,
30 300,000 - whatever, it's, it's just a completely different level of who is hearing it. Yes, you can have materials

in a court file but a court file often requires people to go there to get it. Yes, he's blogging about me, but again, blogs have varying levels of audiences. The blog is still a problem because people Googling my name are
5 gonna come to that blog. But with The Citizen, you have something completely different because The Citizen is also about the legitimacy of what's happening and it changes the kind of conversation in, in some ways, in my view, and it creates - it heightened attention in a way - I felt
10 like it was making me notorious, to be honest with you. I just think that's what was happening at that point.

Q. And the next tab in our Book of Documents is - so, June 24 was the electronic version of Mr. Spears' story in the Citizen, and at Tab 36 here is...

15 A. Mm-hmm.

Q. ...the actual hard copy, Ottawa Citizen, Saturday edition, June 25, 2011 of the same story.

A. Well, that's the thing. I don't know - you know, the thing with the Saturday edition is that's
20 the one that everybody reads, right? It's the, it's the big edition where everybody's buying their Saturday paper. Great. You know, it's - it wasn't buried in the week behind other news. It's sitting - it was in the City Section. It was - I remember with this one, my neighbours
25 saw it and asked me what it was about. I'm not saying in a - you know, I, I, I live in a good neighbourhood, I have good neighbours, but I'm saying, it's - you know, all of a sudden, they're asking, "What, what, what is this? Like what is happening here? What's this all about? What is
30 this saying about you?" You know?

Q. And let me introduce as the next exhibit

the...

MR. DEARDEN: This will be the Trial Book of Documents, Volume 3, Your Honour, which has reproduced some of the media that Mr. Rancourt has generated about...

THE COURT: Is that the new exhibit?

MR. DEARDEN: It will be a new exhibit. This is...

THE COURT: Well, we'll stop before filing that.

MR. DEARDEN: Oh, okay.

THE COURT: Yeah, it's four - it's a quarter to past four. We've been going at it since one now because we took - and I think that we should break now. It's Friday afternoon.

A. Thank you.

THE COURT: And obviously, in view of Mr. Rancourt's decision to walk out and not participate, in all likelihood, it would appear the trial will not take as long as anticipated, so I think that we should break at this point in time. So, have a good weekend everybody.

MR. DEARDEN: Thank you, Your Honour.

CLERK REGISTRAR: (Inaudible) Monday morning, Your Honour?

THE COURT: Monday morning - no, yeah...

A. Monday's a - Monday's a holiday.

THE COURT: No, it's a long...

MR. DEARDEN: Victoria Day.

A. Long weekend, Victoria Day.

120.
Joanne St. Lewis - in-Ch.
Voir Dire

THE COURT: Yeah, so I think it's Tuesday morning at ten o'clock.

MR. DEARDEN: But you can be here Monday, if you want.

...JURY EXITS THE COURTROOM (4:13 p.m.)

THE COURT: All right.

MR. DEARDEN: Have a good weekend, Your Honour.

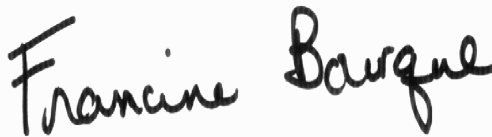
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August 24, 2014

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SUPERIOR COURT OF JUSTICE

JOANNE ST. LEWIS

Plaintiff

v.

DENIS RANCOURT

Respondant

P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE JUSTICE M. CHARBONNEAU
on May 20, 2014, at OTTAWA, Ontario

APPEARANCES:

R. Dearden

Counsel for the Applicant

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Legend

[sic] - Indicates preceding word has been reproduced verbatim and is not a transcription error.
(ph) - Indicates preceding word has been spelled phonetically.

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Ordering Party Notified:October 27, 2014

TUESDAY, MAY 20, 2014

THE COURT: Good morning,

MR. DEARDEN: Good morning, Your Honour.

THE COURT: Possibly you can give me a heads up a bit more now after the fact Mr. Rancourt has left us. Maybe you have a better idea as to scheduling now, your witnesses, etcetera, etcetera.

MR. DEARDEN: I do, Your Honour. I'll just make sure the mic's on. So, Your Honour, what I'm proposing is we have Dean Camille Nelson from the Suffolk University School of Law from Boston ready to go right now, if you qualify her as an expert and then after that, Professor St. Lewis and my guess, Your Honour, is it will take the rest of the day with Professor St. Lewis and that's our goal is to have the examination in-Chief done of Professor St. Lewis today and then tomorrow, Charlyne MacCharles, who is a counsellor for Professor St. Lewis, shouldn't be longer than 10, 15 minutes. President Allan Rock, former vice-president Robert Major, the former Dean, Bruce Feldthusen and then Jackie Beckles, who is a lawyer of justice, who is a friend of Professor St. Lewis and then with your permission, Your Honour, 'cause I'd like these people to know when they're on the - we could do Thursday with the witnesses that you see there, which shouldn't take more than two

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hours and then the read-ins though, which I'm still working on, are gonna be long, 'cause things have changed.

THE COURT: So, that will take the Thursday then?

MR. DEARDEN: Yes. And then what I propose, Your Honour, was on Friday, I come to court and provide you a draft of questions for the jury, for your review, and then as we mentioned last week, because we're not sitting Wednesday, Thursday, Friday, that - and I would request that the plaintiff's closing address be on June 2nd, your charge to the jury June 3rd and I would also request, Your Honour, opportunity to review the charge, a draft of the charge and my intention would be next week, Your Honour, to provide you a factum that would deal with the elements of the cause of action of defamation that would deal with the law on malice that deal with damages.

THE COURT: All right. That's fair then. I'll advise, once we get the jury in, I'll advise them of the schedule then.

VOIX D'UNE FEMME : Monsieur le juge, est-ce que j'ai la permission de vous adresser?

LE TRIBUNAL : Vous êtes?

VOIX D'UNE FEMME : (Inaudible).

LE TRIBUNAL : Approchez-vous un peu là.

INTERPRETER: So, who are you?

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LE TRIBUNAL : Si vous avez - est-ce que
vous avez - vous êtes?

INTERPRETER: Just get up close here.

VOIX D'UNE FEMME : Je suis...

INTERPRETER: Who are you?

ADELE MERCIER : ...Professeur Mercier...

INTERPRETER: I am Professor...

ADELE MERCIER : ...du département de
philosophie...

INTERPRETER: ...Mercier from the
Philosophy...

ADELE MERCIER : ...et du programme de
linguistique...

INTERPRETER: ...Department and
Linguistic...

ADELE MERCIER : ...de l'Université
Queen's...

INTERPRETER: ...Division from the
University Queen.

ADELE MERCIER: ...et je suis le,
l'expert...

INTERPRETER: I am the expert...

ADELE MERCIER: ...répondant...

INTERPRETER: ...the - who will give a r
reply for...

ADELE MERCIER: ...pour la, la défense...

INTERPRETER: ...defense...

ADELE MERCIER: ...et en particulier...

INTERPRETER: ...and in particular...

ADELE MERCIER: ...j'ai une réponse au...

INTERPRETER: ...I have a reply...

ADELE MERCIER: ...témoignage de madame

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Nelson...

INTERPRETER: ...to Mrs. Nelson's...

ADELE MERCIER: ...aujourd'hui ainsi que
témoignage expert...

INTERPRETER: ...testimony today...

ADELE MERCIER: ...au sujet de...

INTERPRETER: ...as well as expert...

ADELE MERCIER: ...de la signification...

INTERPRETER: ...testimony...

ADELE MERCIER: ...des mots en question
ici...

INTERPRETER: ...as far as...

ADELE MERCIER: ...et...

INTERPRETER: ...the meaning of the words
in this...

ADELE MERCIER: ...je...

INTERPRETER: ...situation and...

ADELE MERCIER: ...je suis...

INTERPRETER: ...I am...

ADELE MERCIER: ...généralement prête à...

INTERPRETER: ...generally...

ADELE MERCIER: ...procéder...

INTERPRETER: ...ready...

ADELE MERCIER: ...c'est-à-dire que
j'ai...

INTERPRETER: ...to proceed...

ADELE MERCIER: ...soumis...

INTERPRETER: ...that is I...

ADELE MERCIER: ...un rapport d'expert
de...

INTERPRETER: ...filed in an expert...

ADELE MERCIER: ...d'une centaine de

pages...

INTERPRETER: ...report for...

ADELE MERCIER: ...à la Cour. J'ai aussi préparé...

INTERPRETER: ...about a hundred pages to the Court.

ADELE MERCIER: ...une sorte de - d'aide à la présentation de...

INTERPRETER: I also prepared demonstrative aide...

ADELE MERCIER: ...de mon rapport d'expert...

INTERPRETER: ...for my expert report...

ADELE MERCIER: ...et je voudrais savoir...

LE TRIBUNAL : Mais y'a pas de défendeur pour vous...

INTERPRETER: ...and I'd like to know...

ADELE MERCIER: ...je voudrais savoir...

LE TRIBUNAL : Y'a plus de défendeur pour vous appeler, madame.

INTERPRETER: But there's no defendant...

LE TRIBUNAL : Les témoins...

INTERPRETER: ...to call you.

LE TRIBUNAL : ...n'ont pas de statut particulier.

INTERPRETER: The witnesses don't have...

LE TRIBUNAL : C'est les partis qui ont un statut...

INTERPRETER: ...particular statute.

LE TRIBUNAL : ...puis ils appellent leurs preuves...

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INTERPRETER: The parties have the statute...

LE TRIBUNAL : ...mais monsieur Rancourt...

INTERPRETER: ...and they call for their...

LE TRIBUNAL : ...a décidé de ne pas...

INTERPRETER: ...witnesses but Mr. Rancourt has...

LE TRIBUNAL : ...appeler de preuve.

INTERPRETER: ...decided not to...

LE TRIBUNAL : Donc, ça termine votre mandat...

INTERPRETER: ...present any...

LE TRIBUNAL : ...qu'il avait anticipé vous donner.

INTERPRETER: ...evidence so, that's the end of your mandate...

ADELE MERCIER: Alors, vous aurez pas besoin...

INTERPRETER: ...that he had expected to give you.

ADELE MERCIER : ...de moi pour répondre à madame Nelson?

INTERPRETER: So, you won't be needing me...

LE TRIBUNAL : Non.

INTERPRETER: ...to reply to Mrs. Nelson?

LE TRIBUNAL : Malheureusement, cette...

INTERPRETER: No.

LE TRIBUNAL : ...décision...

INTERPRETER: Unfortunately...

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LE TRIBUNAL : ...par monsieur Rancourt...

INTERPRETER: ...Mr. Rancourt's
decision...

LE TRIBUNAL : ...a été faite peut-être
à...

INTERPRETER: ...was done...

LE TRIBUNAL : ...la hâte-là, mais c'est
fait maintenant...

INTERPRETER: ...maybe...

LE TRIBUNAL : ...et comme je dis, les
témoins...

INTERPRETER: ...in a hasty...

LE TRIBUNAL : ...ne peuvent...

INTERPRETER: ...way but...

LE TRIBUNAL : ...n'ont pas de statut
de...

INTERPRETER: ...what can I say, it's
done.

LE TRIBUNAL : ...se présenter puis
argumenter là.

INTERPRETER: Witnesses don't have a
statute of...

LE TRIBUNAL : Y'a - on pourrait n'avoir
plusieurs témoins...

INTERPRETER: ...showing up and...

LE TRIBUNAL : ...qui pourraient venir
là...

INTERPRETER: ...argue - arguing.

LE TRIBUNAL : ...je suppose. C'est
toujours basé...

INTERPRETER: We could have...

LE TRIBUNAL : ...sur ce que les partis...

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INTERPRETER: ...several witnesses who
could do that.

LE TRIBUNAL : ...puis on ne peut pas
préjuger...

INTERPRETER: It's always based on...

LE TRIBUNAL : ...ce que les partis
veulent ou pas...

INTERPRETER: ...the parties and we cannot
predict...

LE TRIBUNAL : ...appeler comme preuve...

INTERPRETER: ...who will be called...

LE TRIBUNAL : ...et puis ce que monsieur
Rancourt...

INTERPRETER: ...by the parties...

LE TRIBUNAL : ...nous a dit vendredi...

INTERPRETER: ...as evidence and that's
just it.

LE TRIBUNAL : ...c'est que il ne
participait pas donc...

INTERPRETER: Witnesses have no standing.

LE TRIBUNAL : ...il n'appelait pas de
preuve...

INTERPRETER: So...

LE TRIBUNAL : ...et puis vous, vous étiez
un témoin potentiel.

INTERPRETER: ...this is what we were told
by Mr. Rancourt...

LE TRIBUNAL : Donc, le - la réponse...

INTERPRETER: ...that he was not...

LE TRIBUNAL : ...à votre question...

INTERPRETER: ...going to participate and
you...

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LE TRIBUNAL : ...primaire c'est non, vous ne pouvez pas...

INTERPRETER: ...were to be a tentative witness...

LE TRIBUNAL : ...répondre.

INTERPRETER: ...and...

LE TRIBUNAL : D'accord?

INTERPRETER: ...so, the answer to your question is no, you cannot reply. As I said, you have no standing.

HAZEL GASHOKA: Your Honour, if I could address the Court? My name is Hazel Gashoka. I've been summons to be a witness. My name is Hazel and the last name is Gashoka. It's spelt G-A-S-H-O-K-A and I've been given a summons by the - to be a witness for the defendant. So, Your Honour, so, there's an exhibit before the Court in this trial, the exhibit number 7, tab 54.

MR. DEARDEN: Your Honour, I'm objecting to...

HAZEL GASHOKA: And if...

THE COURT: No.

MR. DEARDEN: Excuse me, Miss...

THE COURT: We can't go into merits. You've been summons by a party who decided not to participate any further. So, that's the end of your involvement.

HAZEL GASHOKA: I - but I - no, but I was given a summons and part of - part of the evidence...

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MR. DEARDEN: No, Your Honour...

THE COURT: No, no.

HAZEL GASHOKA: ...of malice for the defendant...

MR. DEARDEN: ...Your Honour I'm objecting...

THE COURT: I understand.

MR. DEARDEN: ...because she's trying to say something in the record.

THE COURT: I understand you were summons by the defendant. The defendant is not proceeding any more so that's the end of your involvement. You can't - a witness does not have any standing of his or her own, you know, in court. It's up to the defendant to call whoever any relevant evidence he wishes to call. So, I'm sorry but you have no standing to - as a witness to participate or say anything about the merits of this case.

HAZEL GASHOKA: Even if some of the material that's included includes me? Like - so....

THE COURT: I - you're not a party. You're not a party. So, these - this is a private matter between two parties and the parties call witnesses. This is not a public commission or something like that. It's a trial. So, that's the way the rules are for a trial. All right? Thank you.

HAZEL GASHOKA: Okay. Well, I

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respectfully disagree with Your Honour.

I...

THE COURT: Well...

HAZEL GASHOKA: ...think it's unfair
and...

THE COURT: You...

HAZEL GASHOKA: ...unjust.

THE COURT: Yeah.

ADELE MERCIER : Monsieur le juge, est-ce
que vous me permettez...

INTERPRETER: Your Honour, would you allow
me inaudible....

MR. DEARDEN: Your Honour, I'm gonna ask
that you call security to ask these people
to stop interrupting this trial. They're
clearly partisan supporters of Mr.

Rancourt. They're making it a circus and
it's unfair to Professor St. Lewis and

we're ready to have you decide whether
Dean Nelson is qualified as an expert in
this trial and we have a jury waiting.

This is a circus and it's - they should be
thrown out of this courtroom, in my
respectful view.

LE TRIBUNAL : Madame...

INTERPRETER: Madam...

ADELE MERCIER : Monsieur le juge...

INTERPRETER: Your Honour...

CLERK REGISTRAR: (Inaudible) court five,
please.

ADELE MERCIER : ...je suis une
personne...

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LE TRIBUNAL : Madame...

ADELE MERCIER : ...hautement qualifié
pour...

INTERPRETER: I am a person...

LE TRIBUNAL : Madame...

ADELE MERCIER : ...répondre...

LE TRIBUNAL : ...madame, assoyez-vous là.

INTERPRETER: ...very qualified. Please
sit down, lady.

LE TRIBUNAL : Si vous voulez écouter
comme membre du public...

INTERPRETER: If you want to listen as...

LE TRIBUNAL : ...vous pouvez. Vous avez
pas...

INTERPRETER: ...a member of the...

LE TRIBUNAL : ...de standing...

INTERPRETER: ...public...

LE TRIBUNAL : ...pour faire des
représentations.

INTERPRETER: ...you can. You have no...

LE TRIBUNAL : Assoyez-vous.

INTERPRETER: ...standing...

ADELE MERCIER : Mais moi, je suis pas...

INTERPRETER: ...to make representings
[sic].

ADELE MERCIER : ...je...

INTERPRETER: But I'm....

LE TRIBUNAL : Assoyez-vous.

ADELE MERCIER : Je suis pas représentante
de...

INTERPRETER: Sit down.

ADELE MERCIER : ...monsieur Rancourt ici.

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INTERPRETER: I don't represent Mr.
Rancourt.

ADELE MERCIER : Moi, je suis embauché
pour aider la Cour à...

INTERPRETER: I have been...

ADELE MERCIER : ...former une décision...

INTERPRETER: ...hired or...

LE TRIBUNAL : Non, c'est là que vous...

ADELE MERCIER : ...éduquée.

INTERPRETER: ... asked to help the
Court...

LE TRIBUNAL : ...ne comprenez pas.

INTERPRETER: ...to make a decision.

LE TRIBUNAL : Vous êtes...

INTERPRETER: This is where you don't
understand. You are...

LE TRIBUNAL : ...sous subpoena, sur
assignation...

INTERPRETER: You've been summoned.

LE TRIBUNAL : ...par monsieur Rancourt.

INTERPRETER: Okay? By Mr. Rancourt.

LE TRIBUNAL : La Cour ne...

INTERPRETER: The Court...

LE TRIBUNAL : ...la Cour n'appelle pas de
preuve...

INTERPRETER: I'm not...

LE TRIBUNAL : ...comprenez-vous? Donc...

INTERPRETER: The Court is not asking for
evidence.

LE TRIBUNAL : ...c'est fini là, madame.
Merci.

INTERPRETER: So, that's it, madam. Thank

you.

THE COURT: All right, let's proceed.

MR. DEARDEN: Your Honour, can I call to the stand Camille Nelson, who is the Dean of Suffolk University School, of Law from Boston.

COURT SERVICES OFFICER: Should we call the jury in?

MR. DEARDEN: No.

THE COURT: No, well...

MR. DEARDEN: You gotta qualify first.

THE COURT: But you may be - you may tell the jury that we will - that we're doing a matter in their absence now and that they will - so that they know that they will be called in the not too distant future but....

MR. DEARDEN: Please face the Registrar?

CAMILLE NELSON: SWORN

MR. DEARDEN: So, Your Honour, I'm gonna hand you a Book of Exhibits of Dean Nelson and you'll find at Tab 2, Your Honour, the retainer letter to Dean Nelson on December 1, 2011 and this was - letter was sent by my partner, Wendy Wagner, to Dean Nelson. Paragraph - you'll see at Tab 2, Your Honour, of Paragraph 1 says, "We are counsel for Professor Joanne St. Lewis in the liable action she has commenced against Denis Rancourt. We are retaining

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you to provide expert testimony in the above-noted matter, including the drafting of an expert report, the scope of which is outlined in the attached memorandum.

Please note that counsel and the court require your honest, independent expert opinion and testimony on certain matters of issue in the dispute and that you must sign the attached acknowledgment of the expert's duty in accordance with the rules that are cited there and the acknowledgment of expert's duty must be attached to your signed expert report."

Now, the memorandum that's referred to in paragraph 1, Your Honour, you will find at Tab 1 of this book. This is also dated December 1st, 2011 and if you turn to paragraph 6 of that memorandum on page 2, Your Honour, it's the two questions that Dean Nelson has been asked to provide an expert opinion on and that is, "The issue to which your opinion relates is whether the expression "house Negro" bears legal innuendo meanings that would be ascribed to the expression by members of the Black community in Canada. If so, what are the legal innuendo meanings that would be ascribed to the expression by that community." And Professor or Dean Nelson was provided the two articles in issue in this liable action that are at that tab, Your Honour, and you'll find the signed

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acknowledgment of the expert duty at Tab 2. So, Dean Nelson signed the retainer letter at Tab 2 and the last page of Tab 2, Dean Nelson has signed the acknowledgment of the expert's duty. And what I would like to do, Your Honour, is to highlight Dean Nelson's qualifications by reference to her résumé that's at Tab 4.

THE COURT: All right, go ahead.

EXAMINATION IN-CHIEF BY MR. DEARDEN

Q. Now, Dean Nelson, you attended elementary and high school in Ontario, correct?

A. Yes, that's right, in Oshawa and Whitby, Ontario.

Q. Oshawa and Whitby and you obtained a Bachelor of Arts Honours from the University of Toronto?

A. Yes, that's right.

Q. And you obtained your law degree, your L.L.B. from the University of Ottawa?

A. Yes.

Q. And that was 1994 that you got that degree?

A. That's right.

Q. And then you obtained a Master's of Laws from the Columbia Law School in New York?

A. Yes.

Q. And you were a summer law student in two summers with McCarthy Tétrault in Toronto?

A. That's right.

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Q. That's during law school, of course?

A. Yes, one's after first year and one's after second year.

Q. Right. And you clerked in the Supreme Court of Canada for Mr. Justice Frank Iacobucci?

A. Yes.

Q. And then from '96 to '98, you were a lawyer at the - a practising lawyer at McCarthy Tétrault in the litigation department?

A. That's right, yes.

Q. And then you switched from practising law to teaching law and you went to professor - you went as a professor at Columbia Law School in '98 to 2000 and at the same time, you were doing your Master's degree?

A. That's right.

Q. And then, you also were a visiting law professor in 2006 at the Université de Paris Dauphine in Paris?

A. Yes.

Q. And you did a few other visiting professor teaching jobs at Seattle University and University of Hawaii?

A. That's right.

Q. And then, you then go to Saint Louis University School of Law from the year 2000 to the year 2009?

A. Right. Many of - just to clarify, many of the visiting professorships were while I was on the tenure track or tenured at SLU, Saint Louis University...

Q. Okay.

A. ...or on the faculty as a distinguished scholar and resident at WASH-U, Washington University in

Saint Louis.

Q. Okay. And then, you had a year in - as a law professor at Hofstra University School of Law in Hempstead, New York?

A. That's right.

Q. And then in 2010 until present, you became the Dean of Suffolk University School of Law?

A. Yes, Dean and Professor there.

Q. Dean and Professor. And that's in Boston?

A. Yes.

Q. And you're the first woman Dean at Suffolk University?

A. Yes, I am.

Q. And you're the first person of colour to be Dean at the Law School, as I understand it?

A. That's right.

Q. And you have - I'm looking - where - at page 2 of your résumé, there's the January term 2006 to 2009 and then 2003 as well. So, five January terms. You were a distinguished scholar in residence at the University of Ottawa's Faculty of Law, Common Law section?

A. That's right.

Q. And what if - first of all, what is that January term and what did you teach?

A. Sure. It's an intensive semester in between - intensive term, rather, in between the end of the December examination period and the start of I - what would be the spring term. So, one of the innovations, since I graduated from the University of Ottawa, was a one to three week January intensive period where students take classes daily and I taught in that as a teaching critical race area, comparative critical race area, I think at

least three or four times and then I taught comparative criminal law as well at least a couple times, once or twice.

Q. So, the University of Ottawa Law School will get International professors such as yourself...

A. Yes.

Q. ...to the Law School for the January intense term and the courses you took or you taught were critical race theory and comparative criminal law. Now, that, in terms of today, the criminal [sic] race theory course deals with racism issues?

A. That - yeah, comparative critical race area or critical race areas is basically a course of study or a scholarship that deals with the ways in which race and racism permeate our society. Critical race scholars grow out of critical legal studies and it really looks at the way race informs the law either implicitly or explicitly. So, it's trying to surface matters of, of race and racism as we look at legal doctoring or legal analysis.

Q. Okay. And if we could flip to page 15 and 16 of your résumé that deals with memberships and associations? I'm looking at the third one on page - actually, it's page 16. You were a member of the Working Group on Critical Race Theory and Empirical Research Methods?

A. Yes, I'm a member of, of this Working Group. It's an ongoing Working Group that meets annually at a Law School. I've attended the sessions that were held at the University of California in Hastings and also, there was a session held a couple years ago at the University of Iowa School of Law.

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Q. Okay. And at the bottom of the - that list of memberships and associations, you were a member of the American Bar Association Commission on Racial and Ethnic Diversity, that is the Co-chair of the Planning Committee for that A.B.A. panel in Honolulu in 2006?

A. Yes.

Q. And what did that entail?

A. That was a, a conversation that was spearheaded by this Planning Committee to address the lack frankly of, of racial and ethnic diversity in leadership in the legal profession, be that at the academic level in terms of leadership in law schools or universities but focussed largely on, on law and also the lack of diversity in our legal practising profession. So, associates, students, partners and, and frankly, also looking at diversity of the bench to trying to start a conversation around this question.

Q. Okay. And you are still currently a member of the Law Society of Upper Canada?

A. I am.

Q. And you still maintain a Canadian - your Canadian citizenship?

A. Yes, I travelled here on my Canadian passport.

Q. Okay. And you are also - your - on page 1 of your résumé, excuse me, under the Saint Louis - your time at the Saint Louis University School of Law, you list a member of the Centre for Help Law Studies. What is that about?

A. That centre is what we called it SLU, Saint Louis University, was we had several centres of excellence and the centre that was the most highly

5 regarded with respect to the U.S. News and World Report national ranking system was the Centre for Health Law Studies. So, that was an amalgam of faculty who were focussed on Health Law issues, for example, Bio, Biomed issues, Erisa issues, issues with respect to Medicare and Medicaid. I focussed on mental health issues as - with respect to my membership in that centre.

Q. And what's the relationship to racism?

10 A. My focus has been mental health disparities in terms of questions around the lesser mental well-being amongst racial and ethnic minorities in North America and looking at how that informs the law, specifically looking at questions of whether racism and racial abuse, how that impacts mental well-being. So, looking at the literature from the mental health sciences
15 that speak to why mental health disparities exist because of racism and structural and historical factors and then asking how we feed that into the law.

20 Q. Okay. Now, your publications, and you have many, start on page 3 and probably this would be a lot easier if you highlighted, starting at page 3, some of the research you've done that involves issues of racism.

25 A. Sure. So, on page 3, frankly, most of my, my research is identity work, critical identity work but in terms of race specifically, if we look at the entry for 20-12, Loving v. Virginia in a Post-Racial World, that and a number of other articles that are - that I could highlight deal with the 1967 case from the U.S. Supreme Court under which the Supreme Court ruled the
30 antimiscegenation law as unconstitutional and those were the laws that prevented white people and "coloured" people from marrying. So, that was a 1967 case in which the

Supreme Court held that people of different races, specifically white people and "coloured" people could marry and that is was unconstitutional under these acts, which were referred to as *Racial Integrity Acts* to prevent their marriage. The 2010 entry, "Racializing Disability, Disabling Race" picks up on some of the mental health work that I mentioned earlier and this article and some of these subsequent articles focuses on the ways in which individuals, black people and people of colour who are mentally disabled in some way, are policed and, and the impacts on our criminal justice system. If I flip the page to page 4, the first full entry, "Racial Paradox and Eclipse" looks at some of the constitutional law with respect to equality and the then president - presidential nominee Barack Obama and really looked at the question of whether we had actually manifested a post-racial society, given some of the racism that became manifest when he was running for president. So, it really looked at that conflict, as it were. The next entry, June 2009, "The Radical King: Perspectives of One Born..." I'm sorry. "Perspectives of One Born in the Shadow of the King." Sorry. Was I hurting your ears? I'm sorry. "Perspectives of One Born in the Shadow of the King", that deals with the ways in which the legacy of Dr. Martin Luther King Jr. has been watered down and minimized and we really just taken out snapshots or little tidbits of his fuller - basically, his full speeches and writings conveniently and we've not really surfaced or discussed some of his more radical and progressive teachings. The, the next one, O.J. Batson and Snyder, looked at pre-emptory challenges and some of the challenges brought against juries whereby racialized experiences like the O.J.

5 Simpson trial were floated to juries in a way that could be seen as colorizing. If I go down to 2007, there's a - an article "American Husbandry: Legal Norms Impacting the Production and (Re)Productivity". Legal Norms Impacting the Production of (Re)Productivity, that article looked at some of the laws during slavery that, for example, prevented the recognition of rape of a - of a Black woman. The laws were specific that rape could only exist of white women and I looked at some of the slave reading practices and the laws that facilitated the slave reading.

10 "Considering Tortious Racism", the summer 2006 entry uses some of the racism related mental disparity work I mentioned as part of my work with the Centre and fed that into tort law with respect to assaultive behaviours and how that impacts one's mental health. The 2006 article 15 "Of Eggshells and Thin-Skulls: A Consideration of Racism-Related Mental Illness Impacting Black Women" again looks at the mental health disparities and the language in that is around mental health sequelae that manifests from racism and how that might be fed into the thin skull and 20 eggshell legal doctrines in terms of tortious remedies for people of colour who have been rendered mentally unwell from racism. "Consistently Revealing the Inconsistencies", the fall 2004 entry, "The Construction of Fear in the Criminal Law" looks at case law in which 25 the fear of people of colour is used in self-defence and provocation cases as defences that are seen as - that are ostensibly seen as reasonable. The...

30 Q. We'll come back to your book...

A. Okay.

Q. ...which is your April 2004 "Racism Eh?" book. We'll come back to that.

5 A. Okay. The 2004 entry on the top of page
10 5, "Breaking the Camel's Back: A Consideration of
Mitigatory Criminal Defenses and Racism-Related Mental
Illnesses" looks at that same health disparities
literature in the social sciences and the psychiatric
literature and the psychological literature and feeds that
into mitigatory criminal defenses, specifically diminished
capacity and provocation. 2000 now, I'll jump down to the
January 2002 article "(En)Raged or (En)Gaged: The
15 Implications of Racial Context to the Provocation Defense"
actually focusses on a Canadian law of, of provocation and
looks at, in particularly the *Smithers* case, which is a
hockey case here in Canada and looks at the racial context
within which that case came to operate and the ways in
which the Supreme Court of Canada dealt with the
20 provocation defense in that case. The 1999 entry of
"Racism in the Legal Profession" was a Canadian Bar
Association report that I was asked to put together for
the working group on racial equality in the legal
profession here in Ontario and I, I was really looking at
the - again, sort of a diversity question in terms of why
do we see such a lack of diversity in Canada around - in
the legal profession and how do we - how do we pipeline
better than we have in the past to positions in the legal
25 profession. The 1999 entry from July, "Out of Sync:
Reflections on the Culture of Diversity in Private
Practice" was published in the Canadian Women's Studies
Journal and that had similar questions around diversity,
both gendered diversity and racial diversity in the legal
30 profession here in, in Canada, specifically focussed on
Ontario.

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Q. And I wanted to circle back now, your book "Racism Eh?"....

MR. DEARDEN: Your Honour, I have the whole book here but I've reproduced at Tab 7 the Table of Contents to the book. I don't know if Your Honour requires me to enter the actual book that is co-authored by Dean Nelson as an exhibit.

THE COURT: No, that's fine.

MR. DEARDEN: Q. So, you have...

THE COURT: I'll hear what the witness has to say about it and we have sufficient - I don't need the whole book.

MR. DEARDEN: Q. So, Dean Nelson, what is this book about and why did you co-author it?

A. Sure. I co-authored this book with my sister, Dr. Charmaine Nelson, who's a professor at McGill in Montreal and we co-authored it because it was our experience growing up in, in Canada and, and being interested and learning more about our, our - the history of people of colour and specifically Black people in Canada. We found that there wasn't a whole lot that was written that was scholarly or accessible to us in terms of the experiences of people of colour, specifically Black people in Canada and moreover, there was even less that was written about Black people by Black people frankly, because of the lack of diversity in the academy and so, we thought that we would, as we call it, make a critical intervention because we were both fortunate enough to be professors and to have achieved a certain amount of recognition in this respect. So, we thought that we would join together as sisters and write this and, and bring

5 together other scholars who were interested in, in these
types of questions and exploring questions of race and
rights and quality and justice in Canada. So, we had a
call for papers and we sent it to as many different
departments and units of all Canadian universities and all
Canadian studies programs in the States and, and Britain
and wherever we could find them and we asked for people to
submit proposals, no matter the discipline. So, it wasn't
as if we were just asking for legal historians or
10 historians or, or art historians. My sister's an art
historian. We wanted to hear what people, in whatever
discipline, might have to say about how race informs the
Canadian experience and then, we selected, out of all the
proposals we received from around frankly the world, those
that we thought were the best and we compartmentalized
15 them by sort of topic area or thematically and, and then
we sought the book and we decided together with Captus
Press to publish it.

Q. And some of those compartments are what?
If you look at Tab 7.

20 A. Sure. Some of the, the thematic
compartments include institutional racism; crime and
justice; First Nations of land, law and power; race, place
and nation; the complexity of inter-sectionality and
performance of racial identity; popular culture;
25 production representation and multiculturalism and all of
these focus on race in the Canadian context on a inter-
disciplinary perspective.

Q. Okay. And you've given a number of
30 presentations, speeches and panels and your speeches and
keynote addresses are - start at page 5 of your résumé.
Do you want to just highlight some of those for us?\

5 A. Sure. So, in, in - just recently, a couple months ago in March, I was speaking at a Pipeline conference again, trying to get more - encourage people of colour to think about the legal profession as a worthy profession for them, speaking to college students and pre-law advisors. I spoke to the Black Law Students on several occasions that you'll see, Black Law Students of Canada on several occasions and you'll see sprinkled throughout my résumé from page 5, several on page 6. I also - and I apologize that this is not in my résumé but 10 it's - certainly if anyone wants to look it up, it's on a web. I was the keynote speaker at the Canadian Association of University Teachers this year in February and the - they - I was asked to speak to the title "Perpetual Crisis, Diversity in the Canadian Academy" and 15 that was in Toronto at, at the Courtyard Marriott in, in the city. If I flip to page 6, in addition to the - as I mentioned the Black Law Students of Canada speaking here in Ottawa keynoting. Last year, I also spoke in November, a couple years ago, the title is "On Whose Backs?", 20 looking at some of the medical experimentation that has been performed on people of colour historically and in contemporary society. You'll also see, for example, March 2010, that I had been speaking a fair bit on anti-miscegenation laws and the ways in which people in inter-racial relationships are marginalized. That's the Lovett and Margins (ph) entry, laws on love in black and white. 25 2010 of March, March 2010, I was invited to speak to the Department of Justice here in Ottawa and I was speaking about what I call "Mission Possible: Achieving Diversity in Complicated Times" and, and speaking to that group of 30 attorneys and policy analysts around how we can move

forward with diversity in the legal profession.

Similarly, with respect to the medical work, March 2010, I was a keynote speaker during Black History month at Hamlin, looking at, again some of the medical experimentation that has been performed on people of colour over - well, over the last several decades and, and what a restitutionary response might be at contract law.

Page 7, April 2009, "Racializing Disability, Disabling Race: Policing Race and Mental Status", I presented at the University of Southern Illinois University School of Law, looking at the way again mentally ill people are policed and I presented that same paper, that same body of research in 2008 at McGill, "Racializing Disability, Disabling Race: Policing the Intersection of Race and Mental Disability", I presented to the Faculty of, of Law at McGill in 2008. I presented that same paper in October of 2008 to the Faculty and community at the University of British Columbia. That was the Marlee Kline Lecture.

This was a, a very well known professor who had passed several years ago so they have a - an inaugural cared basically lectureship and I was invited to be that person.

I also presented the anti-miscegenation laws at U of T, the University of Toronto in 2006, "Lovin' the Man: the Critical Comparative Perspective 40 years after Loving v. Virginia". I - in April 2006, was invited to present to

Harvard Law School first year students specifically Tort on some of my racism related mental health work and how that feeds into Tort law. That's "Considering Tortious Racism and its Implications for the Rights of the (Mentally) Disabled", April 2006 entry. I gave a keynote address to the entering class at the University of Ottawa in 2004. I - in 2001, delivered a paper "Race and

Representation in the Legal Profession and the Judiciary” to the Law Society of Upper Canada in Toronto in March of 2001 and again, looking at diversity in practice and in the academy...

Q. Do you wanna go to...

A. ...and then you’ll see a string of, of presentations here to Black Law Students’ of Canada, the University of Ottawa around breaking barriers and, and race in the profession, the legal profession.

Q. So, that was your speeches and keynote section of your résumé. Then, your presentation section starts at page 8 through to 13. Do you wanna highlight some of the presentations you’ve made?

A. Sure. A couple years ago in the summer of 2012, I was invited to present to Unesco in Paris on the use of, of legal tropes and the way law is informed by race and race informs law and to speak to that question in Paris. I also was invited interestingly a couple years ago to the Ministry of Social Affairs and to speak to gender - about gender issues and in the dawn of the Arab spring in Beirut a couple summers ago and, and I spoke in March of 2011 at the Harvard Law School project on disability and the Charles Hamilton Houston Institute on race and justice on again the racism related mental disparity work and how we might be able to address some of the disparities at law through law. I presented in June of 2010 at the American Association of Law Schools. That’s the AALS entry, June 2010, American Association of Law Schools mid-year meeting looking at again, this notion of whether we are post-racial as many people asserted we would be if we elected - if a - if a Black president was elected and looking at this as a racial paradox. If I go

over the page to page 9, you'll see more entries that deal with the question of whether we're actually a post-racial society, meaning race as a matter and so, that's the, the August 2008 entry. You'll see March 2008, I have an article or a presentation entitled "Norms Towards Husbandry: Legal Imperatives Influencing (Re)productive Interference" and, and there, I was looking at some of the racialized and sexist laws that encouraged the sexual abuse of, of black women during slavery. The next entry, February 2008, "Batson, O.J. and Snyder: Lessons from an Intersecting Trilogy" looked at again the, the use of racial tropes and, and racist imagery during pre-emptory challenges. January 2008, "The Radical King", I again surfacing some of the lesser-known teachings of Martin Luther King in so far as - it's my theory that we have intentionally not really paid a lot of attention to the more challenging messages and urgings of Dr. King's teachings. Same entry of January 2008, "Considering Tortious Racism", I was speaking to the issues of mental health disparities and health law disparities and how those might feed into the Tort system. Then you see some more entries about the anti-miscegenation laws. For example, "Loving v. Virginia 40th Anniversary Symposium" at Berkeley Law School. That was again about the, the barring of interracial relationships and the ways in which interracial couples still experienced discrimination. There was also...

Q. Is that the top of page 10?

A. That was the bottom of 9 and the top of 10.

Q. Yeah.

A. So, there were two symposiums, one was at

Berkeley Law School in California and another was at Wisconsin Law School in Madison and those were again, looking at the ways in which interracial couples, specifically black/white couples still experienced racism and, and looking at how that's connected to those anti-miscegenation laws, the racial integrity laws. August of 2006, I spoke at the American Bar Association in Commission looking at the way race and gender interact in our, our practice lives, our, our professional lives. I'm just trying to pick out - November 2005 and October 2005, I again was looking at some of the slave laws and the imperatives during slavery around breeding practices and the ways in which lineage flowed during slavery to encourage the production of more slaves that would accrue to the owners' profit benefit. Same thing with the July 2005 entry, "Critical Mental Health Issues: Tort Law Possibilities" again looking at that health law literature. If we go over the page to page 11, I'll just flag the May 2004 entry "Talking and Teaching about Race in the Law School Classroom: Critical Race Theory and its Implications", talking about the, the vulnerability and the, the challenges of introducing racial subject matters into our legal discourse and thinking about what it means to not having those questions or conversations when we're talking about certain areas in law. So, really, trying to urge a dialogue to ensure that we consider identity issues and race issues in particular when we are studying law. Page 12, March 2003, "The Construction of Fear: Rape, Race and Jack in the Box", this was looking at some cases where the construction of fear in a number of the cases that would justify self-defence was racialized because the, the then victims were seen as very scary people of colour.

That was looking at the way we construct fear in criminal law. January 2003, more "Of Egg-shells and Thin Skull" work, looking at these racism related mental health issues specifically as they impact Black women. That was at the Law, Cultures and Philosophy of Science Conference. I also presented similar work on July 2001 at the International Congress on Law and Mental Health that was here on - that was here in Canada in Montreal, Quebec. That's the July 2001 entry, "Racism-Related Mental Disorders and the Applicability of the Thin Skull Doctrine". If we go over the page to page 13, I was on a panel of deans. I was an invited panellist for a panel of, of women of colour who were deans at a conference in Berkeley. This, this conference was to recognize and celebrate a book that has recently been published of - called "Presumed Incompetent". It looks at the intersection of race in class for women in the academy and so that whole conference and my talk really spoke about the ways in which women of colour in the academy are, are treated or mistreated. It - the next page, page 14, just flagging October 2006, "Critical Relations: Identity Matters" and it can be read as identity, identity does matter or identity matters and the topic that I presented on was the fact that it does matter how we interact with each other across race, across sex, across sexual orientation, across class that who we are matters when we communicate and interact with each other.

Q. An example?

A. Well, I think we can get into some of the examples today but certainly, given our histories, I think it matters when men talk to women in a certain way. I think it matters when heterosexuals talk to homosexuals in

5 a certain way. I think it matters when white people talk
to black people or indigenous people or First Nations
people a certain way and I think those, those are not
identities that should be ignored as we look about at what
is said and how it's said. I think that informs the
nature of the conversation and communication. February of
2005, "Ebony Roots, Northern Soil: Perspectives on
Blackness in Canada", I was asked to come and speak about
the ways in which racism and race plays out in Canada, in
10 particular, to my mind, one of the ways in which racism
plays out here is we have difficulty talking about race or
acknowledging racism. So, it's, you know, sort of a
quintessential hallmark of Canadian racism might be our
polite denial of racism as opposed to, you know,
juxtaposed against the ways in which racism might manifest
15 in some other Western countries like the U.S.

Q. Okay.

A. The - so, the next page, page 15, I
flagged the entries from 1999 through 1994. Those were
all presentations on Canadian law or diversity and, and,
20 and race in Canada. So, I presented in Ottawa, the
Minister of Justice, the Canadian Association of Elizabeth
Fry Societies, that's July 2009, "Roundtable on
Provocation, Self-defence and Mandatory Minimum
Sentences", and how race informs those questions. 1997,
25 participant in the "Diversity Issues Panel" with the then
Minister of Justice, the Chief Commissioner of the Ontario
Human Rights Commission and the then Treasurer - former
Treasurer Susan Elliott of the Law Society. That was
30 Queen's. In 1995, I was a participant in the
"Reformulation of the Criminal Code, Self-defence"
provision. So, that was a roundtable that was held by the

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- by the Court

5 National Action Committee on the Status of Women. 1994, I
was a participant in the "Reformulation of the Criminal
Code, Provocation Defence roundtable". That was a, a -
the Ontario Women's Directorate. I was invited to
participate in that and also that same year, I was a, a
recognized contributor in the submission to the Honourable
Mr. - Minister of Justice of Canada with respect to the
promocation [*sic*], provocation defence proposals.

10 MR. DEARDEN: So, that, Your Honour, in a
nutshell are the qualifications of Dean Nelson
and I submit to you that she is qualified to
give an opinion on the legal innuendo of house
Negro that would be ascribed to the expression
by members of the Black community in Canada.
As you see...

15 THE COURT: Maybe I have a few questions.

MR. DEARDEN: Sure.

20 THE COURT: Maybe some times too much is not
enough and I - can you - and obviously, you've
been involved in this all of your life and you
- the study of racism and all facets of it.
Can you though direct me more specifically
where your professional knowledge would come
from to provide us an opinion on legal
25 innuendos of language, more specifically...

A. Sure.

THE COURT: ...where...

30 A. Well, just to highlight as well, my
Masters of Law at Columbia, at the time,
Columbia Law School was seen as a powerhouse
in terms of they had a collection of critical

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race theories there and the reason I went to Columbia was to study under their tutelage. So, Patricia Williams, Kendall Thomas, Kimberlé Crenshaw, a number of people were all there. So, my, my study and my work there was all about critical race theory and, and how we - how we basically try to surface these questions of race as they impact the law. So, that was my - and frankly, that was my entire Master studies. With respect to language specifically, the introduction, in particular, of our racism and apology I think addresses some of the ways in which in Canada, we haven't had a lot of conversation about issues of race specifically as they inform policy or law. So, we basically say, we'd like to start this and, and, and I think we have a pretty - a fairly substantive introduction in that - in that book. With respect to my work, I, you know, you talk about - you mentioned I've been involved in this for some time, it's really everything that I've done in terms of the Academy and as a scholar has really dealt with questions of race and, and our challenges around addressing race and Your Honour, I think one of our challenges is, there aren't - there aren't a lot of us, us, people of colour, in particular, doing this type of work. I have not specifically looked at defamation law, for example, nor specifically questions of legal innuendo. My whole focus, since I, I was at law school and did my

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Masters, going on over 20 years now, has been on how we need to do more of this type of work to engage in conversations about the relevance of race and gender as...

THE COURT: Have you looked...

A. ...if affects law.

THE COURT: ...at the impact from either a historical perspective or sociology for the purpose - the impact of racism on the black community?

A. I, I have in so far as my racism, my mental health work focuses pretty much exclusively on the toll that abuse, including racialized abuse or racist abuse, takes on people of colour and one of the key pieces in that, that I, I've referenced in some of my work is one of the Surgeon General's reports from a couple of year - well, it's going on 2001. So, over a decade, focussed exclusively in the supplement on the, the ways in which historical and sociological and social disparities, discrimination, bias, prejudice impacts people of colour and the chapters are broken out like Asian American, Asians, Natives, Cultural, Black people. So, they act - it actually is I think a very informative publication that I've used in a number of my articles and there is a growing body of literature. I call it critical health law, critical mental health law but there's a growing body of literature that looks at the toll that racism takes, holding other things

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constant like substance abuse, poverty, lack of education but so, the toll of racism and isolation on, on people of colour and some of my work has specifically looked at the toll that takes on women of colour and black women, in particular.

THE COURT: But is that - have you gone back in time? Have - is there an historical context to your studies or to your....

A. The historical context is largely the work that I mentioned. It's either listing - listed as American Husbandry or Norms Towards (Re)Productivity. That's all work that grew out of laws during slavery period to the present and how we still see legacy effects of some of those laws against people of colour.

MR. DEARDEN: Could I ask a question, Your Honour?

THE COURT: Yes.

MR. DEARDEN: Q. Dean Nelson, when you were indicating to His Honour that the toll that racist abuse takes on people of colour, the racist abuse would include racial slurs directed at somebody?

A. Yes. It's...

Q. And...

A. ...it's exposed to systemic and system wide concerns that people might have but it's also the individualized - what people have referred to in the literature as micro-aggressions or macro-aggressions. So, what - falling short of the physical battery is are there assaultive - are there impacts from assault, assaultive

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language but even sort of threats. What are the implications of, of, of racism directed specifically to an individual.

Q. And what would...

THE COURT: That area, I'm sorry...

MR. DEARDEN: Sorry.

THE COURT: ...that area, you have either written about or...

A. Oh, sorry...

THE COURT: ...taught about...

A. ...yes.

THE COURT: ...or...

A. Yes.

THE COURT: ...studied about...

A. Yes, I have.

THE COURT: ...about this particular area?

A. Yes, and I could...

THE COURT: Tell me...

A. ...point you...

THE COURT: ...about that.

A. ...to...

THE COURT: That's the...

A. So, so on page 4, there's an article in Tort entitled "Starting Anew", fall of 2006, "Starting Anew: The ADA American with Disabilities - Disability with Respect to Episodic Mental Illness" and in that article, I was looking at the ways in which people have episodic mental illness, meaning just periodic mental debilitation from racism and then the 2006, spring of 2006 article, "Of Egg-Shells

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and Thin Skulls: A Consideration of Racism-Related Mental Illness Impacting Black Women", that was in the International Journal of Law & Psychiatry. That deals with the questions Your Honour has asked specifically. And a number of my presentations similarly, the "Considering Tortious Racism", summer 2006, also on page 4, also addresses mental health consequences and sequelae is the language of the literature and how that could be fed into the law. And a number of my speeches and the research that I did for the speeches, wherever there's racism related mental illness, it's really looking at the impact of racism on someone's psyche, mental health, mental well-being.

THE COURT: All right, thank you.

A. You're welcome.

THE COURT: All right. Well, I'm satisfied that obviously the evidence that is being - that this witness can offer is relevant. It certainly has probative value and that she's a qualified expert to say - to provide an opinion, so I'll allow the dean - Dean Nelson to give opinion evidence on the question that has been suggested here.

MR. DEARDEN: Thank you, Your Honour.

THE COURT: On the innuendo of the words "house Negro". All right. So, we're ready for the jury then?

MR. DEARDEN: Yes, Your Honour.

THE COURT: Okay. Bring the jury.

Camille Nelson

Voir Dire

Possibly, well, possibly we - you - I
don't know if we could take a short break
or are you ready to go? Are you ready to
go, ma'am?

A. I am.

MR. DEARDEN: We're ready.

A. I'm fine, Your Honour.

MR. DEARDEN: I'm ready to go, Your
Honour.

THE COURT: Okay, let's go then. All
right. I just wanna make sure everybody
was...

MR. DEARDEN: And Your Honour, do you want
me to file the original of the - Dean
Nelson's expert report or will the...

THE COURT: No. Well, what we'll do is
that for the purpose of the *Voir Dire*,
we'll file the booklet as Exhibit A in the
Voir Dire and the opinion itself now will
- can be used and filed as an exhibit in
the trial.

EXHIBIT LETTER A: Booklet - produced and
marked.

CLERK REGISTRAR: Excuse me, do you have
an extra copy?

MR. DEARDEN: Do I have an extra copy of
the book? Yes. So, that was...

THE COURT: I won't need this one so...

MR. DEARDEN: ...judge's Exhibit A?

THE COURT: I won't need Exhibit A really.
So, if you - you can mark this one. I

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Voir Dire

won't need Exhibit A. It's not part
really of the evidence at the trial now.
It's only part of the qualification *Voir*
Dire. So...

CLERK REGISTRAR: I don't need another
one. It's okay.

MR. DEARDEN: And, Your Honour, just on
logistics, I was planning on having this
whole booklet given to the jury. Is your
preference that - I mean I'm gonna have to
give them - 'cause I didn't make a copy of
the expert report solo. So, we could give
them the booklets, tell them to turn to
Tab 3, where the expert report is and then
get them back and then make copies at the
break...

THE COURT: Yes.

MR. DEARDEN: ...to the jury.

THE COURT: You can. In fact, I shouldn't
compromise your position. If you want to
get through all of her professional and
file a C.V. in the - for the question of
weight, I suppose, you're certainly
entitled to file a copy of her C.V. and -
but there's a lot of other materials there
I don't think that is - should be filed
but the C.V. surely...

MR. DEARDEN: Well, I have...

THE COURT: Because it goes to weight.

MR. DEARDEN: You'll see, Your Honour, I
have at Tab 5 a Malcolm X speech that I'm

Camille Nelson

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gonna ask Dean Nelson about as well as there's the transcript. So, there's other things in here that I need to refer to the jury. So, we should give that to them and does Your Honour just want us to pull out Tabs 1 and 2, which are the retainer and the instructions or leave them in, 'cause I don't care?

THE COURT: Yes. It doesn't really - there's nothing prejudicial in there but...

MR. DEARDEN: Actually, we'll put out Tabs 1 and 2.

THE COURT: Yes.

MR. DEARDEN: And we'll just leave - eventually, we'll leave them with...

THE COURT: Is it your plan to play the tape of...

MR. DEARDEN: No.

THE COURT: No?

MR. DEARDEN: No. Not to this witness.

THE COURT: Thank you.

ADELE MERCIER : Monsieur le juge, si vous me permettez (inaudible).

STÉNOGRAPHE JUDICIAIRE : On l'entend pas.

ADELE MERCIER : Est-ce que vous me permettez un mot, Monsieur le juge?

INTERPRETER: Will you allow me a word, Your Honour?

LE TRIBUNAL : Madame, je vous ai expliqué, madame...

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INTERPRETER: Ma'am, I explained...

LE TRIBUNAL : ...vous êtes ici comme
une...

INTERPRETER: ...to you...

LE TRIBUNAL : ...membre du public...

INTERPRETER: ...you are here as a
member...

LE TRIBUNAL : ...comme une spectatrice.

INTERPRETER: ...of the public...

LE TRIBUNAL : Vous ne pouvez pas...

INTERPRETER: ...or a spectator.

LE TRIBUNAL : ...participer.

INTERPRETER: You cannot participate.

LE TRIBUNAL : Si vous...

ADELE MERCIER : Non, je suis ici en tant
que...

INTERPRETER: I am here...

ADELE MERCIER : ...experte...

INTERPRETER: ...as an expert...

ADELE MERCIER : ...en domaine de...

INTERPRETER: ...Your Honour...

ADELE MERCIER : ...langage...

INTERPRETER: ...in the language...

ADELE MERCIER : ...diffamatoire.

INTERPRETER: ...of defamation.

LE TRIBUNAL : Non, vous n'êtes pas ici en
tant qu'experte...

INTERPRETER: You are not here...

LE TRIBUNAL : ...de domaine de langage.

INTERPRETER: ...as an expert, ma'am.

ADELE MERCIER : Bien écoutez...

Camille Nelson

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INTERPRETER: Expert language. Well,
listen...

LE TRIBUNAL : Vous êtes ici...

ADELE MERCIER : ...c'est parce que vous
allez présenter au jury...

INTERPRETER: ...you are - you're going to
present to the jurors...

LE TRIBUNAL : ...pour un témoin qui avait
été par un défendeur...

INTERPRETER: You...

LE TRIBUNAL : ...qui a décidé...

INTERPRETER: ...are a witness...

LE TRIBUNAL : ...d'abandonner...

INTERPRETER: ...that had been called
by...

LE TRIBUNAL : ...son cas.

INTERPRETER: ...a defendant...

LE TRIBUNAL : Asseyez-vous puis...

INTERPRETER: ...who has decided to
abandon.

ADELE MERCIER : Non, mais moi je suis pas
- je suis pas...

INTERPRETER: I am not here...

ADELE MERCIER : ...au plaisir du
défendeur moi. Je suis embauché...

INTERPRETER: ...at the service of the...

ADELE MERCIER : ...pour servir à la Cour.

INTERPRETER: ...defendant. I am here...

LE TRIBUNAL : Ce n'est pas - je vous l'ai
dit. Ce n'est pas une commission...

INTERPRETER: I've already told you...

Camille Nelson

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LE TRIBUNAL : ...d'enquête. On...

INTERPRETER: ...it's not an inquiry.

LE TRIBUNAL : ...appelle pas de témoins
at large.

INTERPRETER: We don't call...

ADELE MERCIER : Non, mais là, vous allez

INTERPRETER: ...witnesses...

ADELE MERCIER : ...présenter...

INTERPRETER: ...at large.

ADELE MERCIER : ...au jury...

INTERPRETER: But you're going to...

LE TRIBUNAL : Madame...

ADELE MERCIER : ...des, des documents de
madame Nelson...

INTERPRETER: ...present...

LE TRIBUNAL : Madame...

ADELE MERCIER : ...sur lesquelles...

INTERPRETER: Ma'am...

ADELE MERCIER : ...j'ai travaillé.

INTERPRETER: Ma'am...

LE TRIBUNAL : Je sais qu'est-ce que vous
voulez dire.

INTERPRETER: I know...

LE TRIBUNAL : Vous allez vous...

INTERPRETER: ...what you wanna say. No.
No. I've worked...

LE TRIBUNAL : ...asseoir...

INTERPRETER: They're both talking at the
same time.LE TRIBUNAL : ...puis si vous vous levez,
je vais...

Camille Nelson

Voir Dire

INTERPRETER: The interpreter cannot
interpret both.

LE TRIBUNAL : ...demander que vous
soyez...

INTERPRETER: If you...

LE TRIBUNAL : ...expulsée.

ADELE MERCIER : D'accord. Excusez-moi.

INTERPRETER: ...stand up one more time, I
will ask you to sit down. If you rise
again, I will have you expelled - expelled
from the courtroom.

THE COURT: Bring the jury.

MR. DEARDEN: Well, actually, Your Honour,
just before the jury comes back in, Miss
Mercier was excluded. She can't testify.
She just listened to everything Camille
Nelson just said.

THE COURT: There was an exception for
experts but that's not the point.

MR. DEARDEN: Was there?

CLERK REGISTRAR: Yes.

MR. DEARDEN: Oh, okay.

THE COURT: That's not the point though.
That she - okay.

MR. DEARDEN: Okay. Well, that, yeah, I
agree. She was one of the three
strangers.

CLERK REGISTRAR: All rise.

...JURY ENTERS THE COURTROOM (11:21 a.m.)

CLERK REGISTRAR: All members of the jury
are present, Your Honour. You may be

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seated.

LE TRIBUNAL : Bonjour.

THE COURT: Good morning. Let's proceed.

MR. DEARDEN: Thank you, Your Honour.

Should there be a brief explanation, Your Honour, that you had qualified Dean Nelson as a...

THE COURT: Yes.

MR. DEARDEN: ...an expert?

THE COURT: The next witness is Camille Nelson. She's a dean in a Law School in the United States and she will be providing some opinion evidence in relation to the meaning of the words "house Negro". All right?

MR. DEARDEN: Thank you, Your Honour. And Your Honour, may the jury have the Book of Exhibits of Camille Nelson, but do not read Tabs 1 and 2. We're going to take those out 'cause they're - we're in relation to qualifying Dean Nelson but the Expert Report is at Tab 3 and some other tabs. So, we will give you the book of documents, ladies and gentlemen of the jury. And Your Honour, can I file the original Expert Reports of Dean Nelson as the next exhibit, please?

CLERK REGISTRAR: This will be Exhibit 9.

THE COURT: Exhibit 9.

EXHIBIT NUMBER 9: Expert Report of Dean Nelson - produced and marked.

Camille Nelson

Voir Dire

THE COURT: You might as well give me back
also the book since there'll be a
reference to the book from now on. Okay.
You can mark this one. I'll have the -
you can mark this...

MR. DEARDEN: Your Honour...

THE COURT: ...as Exhibit 9.

MR. DEARDEN: ...I know you had it marked
as a judge's exhibit but can - in light of
the fact that we're keeping a number of
the tabs in here, can we have the Book of
Exhibits labelled as Exhibit 10?

THE COURT: Yes.

EXHIBIT NUMBER 10: Book of Exhibits -
produced and marked.

THE COURT: With one and two...

MR. DEARDEN: Tabs 1 and 2 pulled, which
we'll do...

THE COURT: Yes.

MR. DEARDEN: ...at lunch.

THE COURT: Thank you.

CLERK REGISTRAR: Excuse me, Mr. Dearden,
do you have an extra copy of...

MR. DEARDEN: No, that's the original.

CLERK REGISTRAR: Okay.

MR. DEARDEN: And then the actual copy,
Mr. Registrar, will be Tab 3 of Exhibit
10.

CLERK REGISTRAR: Thank you.

CAMILLE NELSON: RECALLED

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EXAMINATION IN-CHIEF BY MR. DEARDEN:

Q. Good morning, Dean Nelson.

A. Good morning.

Q. Welcome to Ottawa from Boston.

A. Thank you.

Q. Your - I'll just briefly go through your education and some of your work history and research. You attended elementary and high school in Ontario?

A. Yes.

Q. And you have a BA Honours from University of Toronto?

A. Yes.

Q. And you have your law degree from the University of Ottawa in 1994?

A. That's right.

Q. And you obtained your Masters of Law from Columbia Law School in New York City?

A. That's right, yes.

Q. And you were - when you attended law school in the summer between first year and second year and the summer between second year and third year, you worked as a summer law student at the law firm of McCarthy Tétrault?

A. Yes.

Q. In Toronto?

A. Yes, I summered there twice.

Q. And then you clerked for Mr. Justice Frank Iacobucci of the Supreme Court of Canada?

A. Yes.

Q. That allowed you to avoid the awful

experience of articling?

A. Yes, I did not have to article given that I had clerked for the high court.

Q. It's like an apprenticeship, ladies and gentlemen of the jury, that you work with a law firm hard and then you could go get called to the Bar to be practicing law or you can have Dean Nelson's marks and get selected to clerk for a Supreme Court of Canada judge, which you did with Justice Iacobucci?

A. Yes.

Q. In '94 to '95?

A. That's right.

Q. And then, you started practicing law as a lawyer with McCarthy Tétrault, the firm that you summer student'd with?

A. That's right.

Q. And you did that for several years, '96 to '98?

A. Yes.

Q. And then you switched to the teaching of law?

A. Then I went to do my grad work at Columbia in New York and I did - while I was studying, I was teaching as well there.

Q. Okay. In fact, if the jurors could look at Tab 4. That's where Dean Nelson's résumé is. Sorry, I should have told you that earlier. And I'm on the first page here. You then went to St. Louis University School of Law from the year 2000 to the year 2009?

A. Yes.

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Q. And you have listed under there, you were a member of the Centre for Health Law Studies. What's that about?

A. So, the Centre for Health Law Studies, at SLU, St. Louis University, they had several centres of excellence they refer to them as and that Centre for Health Law Studies was one of them and the US News and World Report, which does annual rankings of law schools and, and specialized units of law schools, always very highly ranked that centre. So, it was a - an amalgam of professors who shared common research or teaching interests. So, I was in two of the centres of excellence and this one focused on health law, biomed, Erisa, Medicaid, Medicare, all things law and health related and my focus was mental health.

Q. And how did that apply to people of colour?

A. My specific focus was on mental health disparities and with respect to the study of the ways in which systemic and individual racism or prejudice or bias impacts one's mental well-being. So, looking at the medical literature, the psychological literature, the social science literature, the psychiatric literature around mental health disparities amongst communities of colour, black communities in particular, and how that feeds into the law, be that criminal law, tort law, other types of law, but really trying to bring together those two previously discreet areas of study, law and medicine.

Q. Okay. And you then left the St. Louis University School of Law to become the dean and a

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professor at Law at Suffolk University Law School in -
or School of Law in Boston, and that was from 2010 till
present?

5 A. Right. Between that, I was at Wash U
in St. Louis as well, and then Hofstra in Long Island
as well, and then I became a dean and professor at
Suffolk.

Q. Right. And as I understand it, you're
the first woman dean, first female dean at Suffolk
10 University?

A. Yes.

Q. And first person of colour to be dean
of the Law School?

A. Yes.

Q. And are you the first Canadian to be
15 dean of that Law School?

A. Yes, absolutely.

Q. Right on.

A. But hopefully not the last, right?

Q. And if we flip the page, to page two
20 of your résumé, you - right at the top, Distinguished
Scholar in Residence, University of Ottawa, Faculty of
Law, Common Law Section. You've done the January term,
as you have it there, five times, 2003 and then 2006
25 through to 2009, teaching comparative criminal law and
comparative critical race theory. So, what is this
January term as you describe it there?

A. So, the J term, as they call it or the
January term, was a, a, a new term - post when I
30 graduated, between the December examinations and then
the Spring term, which is pushed back to February and

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the Law School brings in professors, scholars from around the world to teach these intensive week-long or two week or three week long courses. So, I was brought in to teach comparative critical race theory and comparative criminal law, but not at the same time. So, I taught comparative crim law a couple times and comparative critical race theory a few times. So, the students are going to school every day for like, you know, three or four hours a day, so they can get the same number of credits in a condensed period of time, as opposed to, you know, September through December or January through May. It's just every day, they're in school with - in class with us, intensively.

Q. And that's five days a week for three weeks?

A. Five days a week, yeah, five days a week.

Q. For three weeks?

A. Yeah, for two to three weeks, yeah...

Q. Okay.

A. ...depending on the number of credits for the course.

Q. Okay. We have your awards and achievements at pages two and three of your résumé and then you have publications starting at page three. Could you briefly - oh, first of all, I forgot. You're a member of the Law Society of Upper Canada. So, you practice - you're licensed to practice law in Ontario from '96 until today...

A. Still.

Q. ...right? You're....

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A. I'm - I've maintained my licence, yes.

Q. Okay. And now on publications, the bulk of your research is about what?

A. The bulk of my research is, is
5 identity work with a focus on, on race and racism and the ways in which we should consider or might consider race and racism at law, meaning how does race and racism feed into our legal doctrines. How should we consider it when we're analysing legal substance of
10 law.

Q. Okay. Do you want to highlight some of your publications that we see in your résumé?

A. Sure. On page 3, 2012, Loving v. Virginia, that's one of a number of entries you'll see
15 following that deals with the anti-miscegenation laws and the anti-miscegenation laws were laws that prevented the marrying of white people and "coloured" people and the famous case was the Loving v. Virginia case that was decided in 1967, that ruled such racial
20 integrity laws unconstitutional. So, people of colour could marry white people and white people could marry people of colour. So, there's a lot of - my work has dealt with these questions and the ways in which interracial couples are still, still experience
25 marginalization societally. So, looking at that history and the ways that history impacted us. Page 3, August 2010, Racializing Disability, Disabling Race, Policing Race and Mental Status, that grew out of, again, the Health Law Centre work, looking at the ways
30 in which people who have mental illness or who are right - black people who have mental illness who - or

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who are perceived as being mentally ill are policed,
and what are the, the legal consequences of that. Page
4, August 2009, "Racial Paradox and Eclipse: Obama as
Balm for What Ails Us." I was looking at some of the
5 constitutional law and the supposition that we were a
post-racial society or would be if we elected a, a
black president, and really questioning that as a
legitimate, in light of some of the percolating
ugliness and, and frankly racism that existed around
10 the debate in, in, in the media and in some of the
language that was used to describe now President Obama,
then the, the person who was running for President.
June 2009, "The Radical King: Perspectives of One Born
in the Shadow of a King." I look at some of the
15 lesser-known teachings and readings and writings of Dr.
Martin Luther King Jr. and my thesis is really that we
have watered down his message and we sort of cherry-
picked parts of his message that make us most
comfortable and we've strategically ignored a lot of
20 his teachings that might be more troublesome for us to
deal with societally, because they're a little bit more
liberal or progressive. November 2008, "O.J., Batson
and Snyder, Lessons From an Intersecting Trilogy." I
was looking at some of the, the case law and
25 jurisprudence around jury selection and how racial
images and racial tropes were used to exclude jury
members and to polarize juries and especially - in this
particular case, the attorney kept invoking the O.J.
Simpson trial and warning the jury - jurors that, you
30 know, they didn't wanna - they didn't wanna have
another O.J. situation. It was a case involving

interracial crime. So, just the ways in which race is evoked implicitly through instances like that. 2007, November, "American Husbandry: Legal Norms Impacting the Production of (Re) Productivity." There'll be a string of articles like this or presentations. These were articles or research that I focused upon the jurisprudence of slave - during slavery that either defined race - defined rape as specifically of a white woman, so that there could no [sic] be - could not be a legal rape of a black woman and the other jurisprudence that facilitated breeding practices, for example, that the, the offspring of a, a child born of a black woman through rape by a white man flowed through, unlike the atypical jurisprudence, accrued to the ownership of the white man because the person - the child would be born of slave status, unlike the traditional English jurisprudence was the status would follow the free - follow the father. So, so, I was looking at those types of laws that really incentivized or allowed for sexual abuse of black women. Summer 2006, "Considering Tortious Racism", again, looking at some of the social science and health law and mental health law or literature around mental health disparities and feeding that into tort law specifically. Fall of 2006, just above that, "Starting Anew: The ADA's Disability with respect to Episodic Mental Illness." I was looking at some of the case law in which people of colour were racially abused in some way and the mental health consequences of that abuse and how we should deal with that in law, how we might deal with it in law. Similarly Spring of 2006, "Of Egg-shells and Thin

Skulls: A Consideration of Racism-Related Mental
Illness Impacting Black Women." That's again the -
bringing the health law work - health work together
with the legal work. So, the work being done around
5 mental health disparities and feeding that into the
law, in particular the eggshell doctrine and the thin
skull doctrine. The next entry, Fall of 2004,
"Consistently Revealing the Inconsistencies: The
Construction of Fear in the Criminal Law." This work
10 looked at the self-defence doctrine and the provocation
doctrine and the ways in which the fear of black people
was a part of the reasonable fear doctrine in those
defences to result in either mitigatory or exculpatory
outcomes for a defendant. So, the ways in which we
15 construct fear along racial lines, who - who are we
afraid of, was the question? And is that raced? April
2004, I co-edited an anthology with my sister, Dr.
Charmaine Nelson, who teaches at McGill. It's a....

Q. That would be this book?

20 A. Yes, that's that book.

Q. And we have reproduced at Tab 7 the
cover page and the table of contents for your book?

A. Yes, that's right.

Q. And we'll circle back to this...

25 A. Okay.

Q. ...just to maybe complete your
highlight - which publications you want to highlight,
and then...

A. Okay.

30 Q. ...we'll have you quickly highlight
your presentation speeches as well.

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5 A. Okay. So, on page five, top of the
page, January 2004, "Breaking the Camel's Back: A
Consideration of Mitigatory Criminal Defences in Races
- Related Mental Illness." This is again bridging the
social science psychiatric, psychological literature
around mental health disparities and how racism impacts
one's mental health and mental well-being and how we
might deal with that in law, in our criminal law in
particular. 2002, January of 2002, Engaged or -
10 "(En)Raged or (En)Gaged: The Implications of Racial
Context to the Provocation Defense" is actually a, an -
a study and analysis of the Canadian provocation
defence as it was impacted by a, a fairly famous case
that we study in law school here called the *Smithers*
15 case, Regina v. Smithers and it was a, a hockey case in
which a, a, a young black man was racially taunted
throughout the game and then a fight ensued and the
person - he ended up punching a person on the other
team and that person died, and so the question that I
20 pose is, should we consider at all that he was - is it
relevant at all that during the game, people in the
stands and the other players were racially taunting
him, and if so, what do you do with that, at law? So,
what does - does racial context matter to the
25 provocation defence in that case, and if so, how does
it matter? 1999, "Racism in the Legal Profession", I
was asked by the Canadian Bar Association to prepare a,
a critical legal essay for that working group and, and
I looked at the lack of diversity in the legal
30 profession and in the legal academy, so really the
question was how do we pipeline, how do we make sure we

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have women and people of colour going to law school, because unless you go to law school, you're not gonna become an attorney and then - unless you become an attorney, you're not gonna become a judge. So, how do we encourage young people, especially women and people of colour and traditional outsiders, to go to law school? What do we do? What do we need to do? 1999, July of 1999, "Out of Sync: Reflections on the Culture of Diversity in Private Practice." That was published in the Canadian Women Studies Journal and it was re-published in the American Bar Association report, Minority Retention Summit, and again, I was looking at a lack of diversity in the legal - in the legal profession, starting in school, law school, all the way through to the practicing bench and bar.

Q. And can you tell the jury a little bit about your book and why you decided to write this book?

A. Sure. So, my sister is a, a PhD. She's a Doctor of Art History. She teaches at McGill, and when she was a prof at Western, and then she moved to McGill and I was a prof at, at St. Louis University, and we were both trying to do research before that, we discovered that there wasn't a lot that was written on the experiences of race and racism in Canada. In particular, there wasn't a whole lot that was written up on the experiences of race and racism in Canada by people of colour. So, we decided that, you know, to the extent we were both really fortunate and privileged to be professors, that we should try to bring people together who were writing in these areas, and in particular, try to bring people together of, of - who

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are traditional outsiders, who are writing about the way race and racism manifests in Canadian society. So, we, we sent out an invitation to every single department and every single academic unit of every Canadian university and every *Canadien* or Canadian studies department in the States or in Britain, inviting proposals from any discipline, pharmacy, geography, history, law, art history, history, English - anything that existed. We sent an invitation asking - soliciting for proposals to be included in, in this anthology, and we, we got literally hundreds of proposals that were sent to us and then Charmaine and I went through them and tried to figure out which ones we thought were the best and which ones we should group sort of thematically for the anthology. And once we did that, then we shocked the book and, and, and got a publisher and then it was published in 2004.

Q. And those themes we would see at Tab 7 in your Table of Contents?

A. Yes. So, we, we consolidated the papers thematically, the ones that we accepted, you know, institutional racism, crime and justice, First Nations of land, law and power, race, place and nation, complexity of intersectionality and performance of racial identity, popular culture, production and representation, and multiculturalism.

Q. Okay. And then we find at pages 5 through to 15, a listing of your presentations, speeches and panels, and...

A. Yes.

Q. ...you wanna just highlight a few of

them...

A. Okay.

Q. ...not all of them.

A. Sure. So, of, of interest might be
5 this year, you know, in February during Black History
Month, I made a couple of presentations, some in the
States, some in Canada, including - and I apologize,
this isn't in the résumé but if you look it up, it is
online, the Canadian Association of University Teachers
10 invited me to be their keynote speaker in February in
Toronto at the Courtyard Marriott and the title was -
of this Canadian Association of University Teachers
conference was Perpetual Crisis, Diversity in the
Canadian Academy. So, it brought together all
15 professors, you know, professors from all over the
country, from whatever discipline. I've spoken a
number of times - you'll see on page 5 and then on page
6, to the Black Law Students' Association of Canada, at
their national conference, including conferences in
20 Ottawa. You'll see that on page 5, last entry, as -
and as well on page 6, last entry, usually during
February, Black History Month. I, I've spoken about
the health law consequences of medical experimentation
on, on people of colour. For example, November 2012,
25 the YMCA in Boston, I was asked to present a paper and
I spoke about how the law should deal with ongoing and
historical medical experimentation and medical
advancements that were gleaned from experimentation on
slaves on through to contemporary experimentation on
30 poor people and, and poor people of colour, in
particular. I spoke to the Department of Justice in

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March of 2010 here in Ottawa. I was invited by the
Ministry of Justice to speak about diversity in the
legal profession, and I entitled my paper, "Mission
Possible", meaning we can do this, achieving diversity
5 in complicated times to deal with the lack of diversity
in our profession. If I turn the page to page 7, top
of the page, April 2009, you'll see more mental health
work, Racializing Disability, Disabling Race. I've
presented this work that looks at, again, mental health
10 sequelae and mental health consequences of racism and
how we deal with that at law. I presented at
University of Southern Illinois but - and you'll see
also November of 2008, I also presented at McGill in
Montreal and the Patricia Allen Memorial Lecture and I
15 also delivered the Marlee Kline lecture on the same
subject matter, mental health, well-being and race at
UBC in Vancouver. I've presented some of the anti-
miscegenation work around interracial couples, meaning
again, you know, how interracial couples have been
20 treated at law historically and in the contemporary
age. I presented at U of T - University of Toronto, in
2006. I presented on race and representation in the
legal profession and the judiciary in March of 2001 at
the Law Society of Upper Canada in, in Toronto. That's
25 - yeah, the entry on page 7. Do you want me to keep
going or....

Q. Only if you think there's anything
else under "Presentations" that the jury should know
about.

30 A. Maybe I'll flip to page 10, in August
of 2006, you'll see that I presented at the American

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Bar Association, "Racial Crusades at a Gendered Intersection", really again asking the question about gender and race diversity in our, in our profession, in the legal profession, and, and how does sexism and racism manifest in, in our legal profession. I presented at the Association of American Law Schools, January 2006, on disability and, and race, and, and how that might feed into the criminal law curriculum. I presented - bottom of the page, July 2005, "Critical Mental Health Issues: Minorities and Multiculturalism" at the 29th International Congress on law and mental health in Paris. I - I've also published with that organization. On the next page, page 11, "Talking and Teaching about Race in the Law School Classroom: Critical Race Theory and its Implication" again, trying to help and figure out how we might be able to talk about race civilly and how we might be able to talk about racism civilly and politely when we - and, and try to engage each other respectfully as we deal with these issues that are, that are controversial or at least challenging but it would be my suggestion that we - it's hard to teach law without acknowledging the role that identity, in particular race, plays in some areas. Oh, if we go over the page to page 12, March 2003, "The Construction of Fear", that was a, a, a presentation that again looked at when we look at criminal law in particular, who do we fear, how does that play out, how do we - how does our sense of race inform our fear in the criminal law. January of 2003, "Of Egg-shells and Thin Skulls: A Consideration of Racism-Related Mental Illnesses Impacting Black Women". That was at the Law,

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Culture and Philosophy of 'Science' Conference in Virginia, and I was again presenting on the, the sort of toll that racism systemically or structurally and individually takes on black women in particular. I presented similar work in July of 2001 at - in Montreal, "Racism-Related Mental Disorders and the Applicability of the Thin Skull Doctrine". That was July of 2001 at the International Congress on Law and Mental Health that was held in Quebec.

Q. Okay. And then you've listed your panels on pages 13 to 15.

A. Right.

Q. All right. Could you tell us, Dean Nelson, your interactions with Professor St. Lewis over the past 20 years?

A. Sure. I - Joanne St. Lewis, Professor St. Lewis, was one of my professors in an upper year class. It was a seminar and I think it was called *The History of Legal Thought*. It was a small group seminar. So, that would have been in my second or third year of law school. So, - when would that - '92 or '93. Thereafter, I, I - when I taught in the J term, the January term, the then-dean would have dinners for all of the faculty and invite the people from the J term who came to Ottawa in from other countries as well as the full-time faculty in residence to come to dinners. So, I'm sure Joanne was at some of those dinners. Similarly, you know, I'm sure that Joanne would have been at some of those black law student conferences in the years past when I was there.

Q. And when's the last time you - before

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today, when's the last time you met Professor St. Lewis?

A. The last time I taught in a J term. So, 2009, I think.

5 Q. Yeah. J term being January...

A. January...

Q. ...term?

A. ...term, sorry, yeah. The, the last one I taught in the January term in Ottawa.

10 Q. Okay. Now let's turn to your Expert Report, which we've reproduced at Tab 3 of this book, and you - your opinion is that the term "house Negro" is synonymous with the term "house nigger", and in terms of how Malcolm X used the term, and do you have an example of the speech where Malcolm X used those two
15 terms interchangeably?

A. Sure, if I could, if I could take you to actually the tab of this - one of the renditions of the speech, is that okay?

20 Q. Yeah.

A. Okay. So, Tab 5, Malcolm X, like many orators, he delivered several versions of this speech in different fora and, and this speech that's reproduced on page 5 is one of them and it's one of the
25 earlier ones. This is from Detroit in '63, Detroit, Michigan, and on page 3, if you flip - yeah, over to page 3 of this message to the Grass Roots, Malcolm X, November of - November 10, '63, I'll just highlight some of the parts that I think show the use, the
30 synonymous use....

Q. So, we're going in three pages?

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A. Yes.

Q. One - okay, and - so if that would be the page, in the top left-hand corner, is "Shall overcome?"

5 A. Yes.

Q. Okay.

A. So, to the second full paragraph, then, that starts "To understand this..." and I'll show you the sort of connections. So, he says, "To
10 understand this, you have to go back to what [the] young brother here referred to as the house Negro and the field Negro -- back during slavery." And then he talks about characteristics that he felt that the house Negro had. He said, "...they lived in the same house,
15 they dressed pretty good, they ate good, 'cause they ate the master's food. They lived in the attic or the basement, but they still lived near the master and they loved their master more than the master loved himself. They would give their life to save the master's house
20 quicker than the master would. The house Negro, if the master said, 'We got a good house here,' the house nigger would say, 'Yeah, we got a good house here.' Whenever the master said, 'we', he said, 'we'. That's how you can tell a house Negro." Now the very next
25 paragraph that starts with "If...", he says,

"If the master's house caught on fire, the house Negro would fight harder to put out the blaze than the master would. If the master got sick, the house Negro would
30 say, 'What's the matter, boss? We sick!' He identified himself with his master more

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than the master identified with himself.
And if you came to the house Negro and
said, 'Let's run away, let's escape, let's
separate,' the house Negro would look at
you and say, 'Man, you crazy. What you
mean, separate? Where is there a better
house than this? Where can I wear better
clothes than this? Where can I eat better
food than this?"

And this is where - this (indiscernible)
comes in.

"That was that - that was that house
Negro. In those days, he was called a
'house nigger'."

Pardon my language, I'm sorry. So - and
when he says, "in those days", he's referencing, in my
opinion, that previous paragraph that started, "To
understand this, you have to go back to what [the]
young brother said, back during the days of slavery."
So, he says, "In those days..." meaning during the days
of slavery, "...this house Negro was called a 'house
nigger', and that's what we call him today, because we
still got some house niggers running around here." And
then the very next paragraph, Malcolm X says, "This
modern house Negro loves his master." So, so he's
saying the sort of more - during slavery, we might have
said "house nigger", but now, with - even though we
still have some of these house niggers running around
here, this is call - this person is called a house

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5 Negro who loves his masters. And so he, he has this
sort of elision between the, the terms, and later on,
he goes on to say, if I could just draw your attention
to the same page, a few paragraphs down that starts,
10 "Just as", he has another, you know, synonymity - he
starts to refer to the house Negro as the Tom, so he
says, "Just as the slavemaster of that day used Tom,
the house Negro, to keep the field Negroes in check, the
same old slavemaster today has Negroes who are nothing
15 but modern Uncle Toms." So, he's sort of connecting
those three terms from slavery to the contemporary age,
at least when he was speaking in, in '63.

Q. Okay. And at Tab 6, you've
transcribed the video clip that is imbedded in one of
15 the articles in issue in this action, which is Exhibit
3. So, there's a Malcolm X YouTube video and we've
transcribed it here at Tab 6. Was this version of the
Malcolm X speech, the famous speech that Malcolm X
delivered in 1963 in which he defined the term "house
20 Negro"?

A. No, I think this is the '65 version.

Q. Okay.

A. 1965 version.

Q. Okay. And you've been asked to
25 provide an Expert Report on these two questions, Dean
Nelson, whether the expression "house negro" bears a
legal innuendo meanings that would be ascribed to the
expression by members of the black community in Canada?
So, that's the first question, whether there's legal
30 innuendo or a special meaning that would be ascribed to
the house negro expression by members of the black

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community in Canada, and if your opinion is yes, your -
you've been asked, what are the legal innuendo meanings
that would be ascribed to the expression by the black
community in Canada? And your answer to the first
5 question, as to whether house negro bears legal
innuendo meanings that would be ascribed to the
expression by members of the black community in Canada?

A. Yes, I believe it does.

Q. And then, being as this isn't a memory
10 game, you've done a report on what the legal innuendo
meanings would be ascribed to that expression by the
black community in Canada. So, let's go back to your
report, your Expert Report at Tab 3, and can you
highlight parts of your opinion to the jury where some
15 of those special meanings would be known by black
Canadians.

A. Sure. On, on page two of my report,
there's a, a subheading, "House Negro as Racial
Insult." The paragraph that begins, "Simply put",

20 "Simply put, to be a house negro
is to be a sell-out to one's race,
to be a conspirator and an
accomplice with those who seek to
oppress black people and to
25 further white privilege and
racism. The term means to be a
black person who did or does the
oppressive bidding of the white
slave owner or master."

30 That's the first, I think, definition or,
or meaning that would be attributed.

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Q. Okay.

A. If we go over the page to page 3, the first full paragraph that starts, "The sting",

"The sting of this insult, house negro, is especially derogatory given the treacherous and traitorous nature of the assertion. A house negro or house nigger is untrustworthy, disingenuous and disloyal to his or her own community. To use the vernacular, those being accused of being a house negro or house nigger are race traitors who throw their fellow community members under the bus to advance their own interests and the interests of their white benefactor - the historical or contemporary white master in order to maintain oppression against their community members. In this way, those demeaned as house negroes are to be regarded by members of their race with grave suspicion and as enemies to the cause of racial equality."

Further down on that page, just after the quote, "The meaning" that paragraph that starts with,

"The meaning",

"The meaning of the terms house

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negro and house nigger is even more defamatory to those who have a deep appreciation of black history. Specifically, if one has any sense of slavery reconstruction, the Jim Crow era segregation or systemic and individualized racism, the meaning of house negro or house nigger is all the more cutting and offensive. It is my opinion that black Canadians would have a common understanding that use of the expression house negro against a black person is intended as a racial slur meant to taunt him or her as a race traitor, a racial defector and one not to be trusted by members of the black race."

Then if, if we go over to page t, I'd like to highlight the, the second full paragraph that starts, "To Malcolm X..."

"To Malcolm X, the house negro was traitorous precisely because his or her well-being was contingent upon the maintenance of the institution of slavery, the system of legalized forced bondage of people of African descent that profited from the denial of humanity of those enslaved, thus

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the self-interested ways of the
house negro led Malcolm X to
conclude that the house negro
sacrificed his or her own...his or
her integrity and community in
subservience to the master."

5
10
And that quote that's embedded, it, it
starts - it's in italics, "*The house negro always
looked out for his master. When the field negroes got
too much out of line, he, meaning the house negro, held
him back in check and he put him back on the
plantation.*" If we go over to page 7, the second full
paragraph starts, "Just as..."

15
20
25
"Just as Malcolm X stated that the house
negro takes pride in being the only one
and would never want to separate from the
master, so too today, those cast as house
niggers are seen as exclusionary sell-outs
[instead of...] sell-outs interested in
their own advancement and disparaging or
dismissive of the majority of black
people. In this way, those referred to as
house niggers, or house negro or house
niggers, or Uncle Tom's, are cast as sell-
outs desirous of pleasing their white
master at any cost to themselves or their
community."

30
If we go to page 9, under "Conclusion",
that paragraph that starts under "Conclusion", it

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starts with "While" but mid-way through that...

"While the urban dictionary states that a house negro is a black person who rejects their cultural identity to please the white man...", then a couple paragraphs, "Indeed adding the word house to negro rings as an added insult as it returns the rawness and gravity back to the term as it is more clearly tethered to the demeaning caricatured notion of the slave sell-out in perpetual service of the white master of slavery."

And then the last page of my report, the first paragraph,

"To understand the nature and impact of these words, one must simultaneously appreciate that for black people, negro and nigger, house negro or house nigger, have a disparaging offensive meaning, especially when one understands the historical resonance. Once used, especially by a white person against a black person, given our history, there is very little that can be said to mitigate the dimensions of these racial slurs."

And the last paragraph, the sentence

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starts - third sentence, "Given the connections" in the last paragraph,

"Given the connection between the expression negro and nigger in our contemporary cultural consciousness, as terms imposed upon black people, being called a house negro or a house nigger bears legal innuendo to which members of the black community in Canada would ascribe a negative and insulting meaning. This meaning is firmly rooted in the historical context and usage of the term that lends its weight as a demeaning and offensive indictment. Once levelled, this term is not susceptible to parsing with nicety. Whether the insulter meant something different from the common understanding or did not intend to be insulting, or [inserts some...] asserts some complimentary meaning, the commonly ascribed understanding of house negro amongst black Canadians and Americans is as described above, as a potent assaultive insult firmly grounded in the history of slavery, and the degradation and dehumanization of black people."

Q. So, those passages that you read in, those are the legal innuendo meanings that would be ascribed to the expression house Negro by the black community in Canada?

A. Yes, in my opinion, yes.

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Q. And Dean Nelson, do you adopt this entire report that we have at Tab 3 as part of your evidence today?

A. Yes, I do.

MR. DEARDEN: Your Honour, that's all the questions I have for Dean Nelson.

THE COURT: Thank you.

A. Thank you.

THE COURT: We'll take a break at this point in time.

MR. DEARDEN: Thank, Your Honour.

THE COURT: Fifteen - maybe I can mention to the jury before they leave, so that we - give you an idea of the scheduling.

Obviously, the development - the surprise of last Friday as we had to review the timetable, so I'm told by the plaintiff counsel, plaintiff's counsel that there is a full week of evidence - well, at least three days of evidence and possibly it will extend until Friday, and maybe not. Then the problem that we have - and then there's a customary review of matters that would be done at that point in time, which we will have to do - the problem we have really is a problem I have, as I told you, we were not sitting on the 28th, 29th and 30th. So, that the - at first blush, we could try to provide closing address of plaintiff and the charge to the jury on the 27th but the problem with that is that

Camille Nelson - in-Ch.

Voir Dire

once you're sent to deliberation, I have to be available. There may be questions, *et cetera, et cetera* - you'll have a number of questions to answer. So, that is not feasible because for personal and medical reasons, I will not be here to answer any of your questions on the 28th, 29th and 30th. So, what will happen is that we'll - the balance of the evidence will be presented this week and there'll be - the plaintiff's closing address will be on June the 2nd, which will mean - and - I will give you my charge on the Tuesday the 3rd and then you'll be free to deliberate starting on the 3rd after my charge and then until such time as you come back a verdict four or five or six, or whatever. So, this means that for your own personal scheduling, you will not be required next week. All right? Thank you. We'll take 15 minutes.

...JURY EXITS THE COURTROOM (12:08 p.m.)

MR. DEARDEN: Well, Your Honour, may Dean Nelson be excused? I should have asked you...

THE COURT: Yes, you may.

A. Thank you.

MR. DEARDEN: Thank you, Your Honour.

R E C E S S

Joanne St. Lewis

Voir Dire

U P O N R E S U M I N G :

THE COURT: All right, call the jury,
please.

MR. DEARDEN: Can Professor St. Lewis
retake the stand, Your Honour?

THE COURT: Yes.

...JURY ENTERS THE COURTROOM (12:29 p.m.)

CLERK REGISTRAR: All members of the jury
are present, Your Honour.

THE COURT: All right. We'll continue now
with the evidence of the plaintiff, Mrs.
St. Lewis. We had called the - Mrs.
Nelson out of order so as to free her to
go back to Boston. All right. So, let's
go.

MR. DEARDEN: Thank you, Your Honour. So,
Your Honour, I'm going to enter as the
next exhibit what I'm calling Book of
Exhibits, Professor St. Lewis, Volume 3,
and these are a number of emails exchanged
between Mr. Rancourt and Ms. Gervais.
Mireille Gervais was the director of the
Student Appeal Centre. So, that would
be...

CLERK REGISTRAR: That's Exhibit Number
11.

MR. DEARDEN: ...Exhibit Number 11.

EXHIBIT NUMBER 11: Book of Exhibits,
Professor St. Lewis, Volume 3 - produced
and marked.

THE COURT: And that will be my copy,

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Voir Dire

right? You'll have a - you have a copy -
another copy there? Thank you.

JOANNE ST. LEWIS: RECALLED

EXAMINATION IN-CHIEF BY MR. DEARDEN:

Q. Do you have a copy...

A. Not in front of me...

Q. ...Professor St. Lewis.

A. ...at the moment.

MR. DEARDEN: Mr. Registrar, can Exhibit
11 be provided to....

A. Okay, thank you.

MR. DEARDEN: Q. Okay, Professor St.
Lewis, the - I'm asking you to look firstly at the
first four tabs of Exhibit 11. So, you should have at
Tab 1, an email from Ms. Gervais to Mr. Rancourt,
February 11, 2011 at 2:38 p.m.?

A. Yes, I see it.

Q. And it says, "What do you think?" And
it says, "Freedom of the information documents prove
Joanne St. Lewis' lack of independence from the central
administration." You see that?

A. Yes.

Q. And then Tab 2 should be a February
11, 2011, 3:20 p.m. email from Mr. Rancourt to Ms.
Gervais that says, "It's good but better you show
instead of prove. Understate is best here. How
about..." and then he offers a few suggestions, like U
of O cover-up campaign to discredit racial
discrimination report, access to information shows -

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last one is my favourite, yours is good and more
specific. "I think the cover-up is the big malfeasance
issue here. They covered up the lack of independence
and their interference. Cover-up is a major wrongdoing
5 that directly implicates Rock and Major and other
people - other top people. Signed, Denis." And then
the next Tab 3....

10 THE COURT: Can I just stop you there? I
have some problem with this. What - these
are emails between Mireille Gervais and
Denis Rancourt?

15 MR. DEARDEN: Yes, and I'm gonna ask
Professor St. Lewis, Your Honour, at any
time before the publication of the
articles in issue, was she aware of these
emails that I have in Tabs 1 to 10? At
any time prior, was she aware of these
emails and then the second question, when
did she learn about these emails?

20 THE COURT: Well, I think you're going to
take a early lunch. We'll get you back
here at two o'clock. I'll have to have
some conversation with counsel. So,
you're free until two o'clock.

25 ...JURY EXITS THE COURTROOM (12:34 p.m.)

THE COURT: Tell me about this. I don't
understand this.

30 MR. DEARDEN: So, I'm not putting them in
for the truth of what is in there, Your
Honour. I'm putting it in that there was
the fact of the exchange of emails between

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Voir Dire

Ms. Gervais and Mr. Rancourt.

THE COURT: So, how is this relevant, the fact of the emails?

MR. DEARDEN: That there was a - prior to publication, which is why I'm asking prior to publication, basically, Mr. Rancourt was out to get - like he had a bias. He was prejudiced totally...

THE COURT: On malice?

MR. DEARDEN: Yeah. Yeah. Had his mind made up and was totally prejudiced against anything Miss St. Lewis would've - or Professor St. Lewis would've written in that report. And, Your Honour, I'll take you to the one that to me is...

THE COURT: Maybe I should. It's because I need to have - I'll just read this a minute. Thank you. And Tab 3 is simply a "*Joyeux Noël*"?

MR. DEARDEN: The *Joyeux Noël en retard*. So, that - what that is, Your Honour, is - it - that actually is the French and English hyperlinks to the Student Appeal Centre news article written on February 11th, about three hours before Mr. Rancourt published his article and issue in this action. So, if you...

THE COURT: So, it's an hyperlink and he - she sends to him by and by saying "*Joyeux Noël*", she also sends the reaction of the Appeal Centre, which they put on their

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blog, is that it?

MR. DEARDEN: She - what - you hit one of those links, you get the French and English news item of the February 11, 2011 Student Appeal Centre...

THE COURT: Right.

MR. DEARDEN: ...item, which is in evidence.

THE COURT: Okay.

MR. DEARDEN: And then his response is the next tab, which is, "I'm crying with joy. This is the most best X-Mas present I ever got. I love you, Denis." And I could also tell Your Honour that - and again, I repeat, I'm not putting this in for the truth of the contents...

THE COURT: No, I understand that.

MR. DEARDEN: I will have a number of read-ins in particular on this one, Your Honour, so that it will be in the evidence through the mouth of the defendant that, you know, in asking questions about this email.

THE COURT: Yeah. Well, his own words is in any way admissible and it's not hearsay to that extent but some - what the plaintiff says but to what a defendant or a party says. Okay. So, the relevance would be the malice. Okay. Now, while we're at it, let's look at the others.

MR. DEARDEN: Yeah, so, that's a separate

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topic, Your Honour, so then you'll see that Tab 5 is a November 2008. So, the rest of these items - these tabs are dealing with Ms. Gervais' report mistreatment of students. The report that Professor St. Lewis evaluated, this is prior to it being made public, emails exchanges between Mr. Rancourt and Ms. Gervais about her report.

THE COURT: Okay, let's see here. So, she - Mrs. Gervais sends this to Mr. Rancourt and it's a letter she intends to sell to - to send to the University, Allan Rock and the members of the administration?

MR. DEARDEN: Yeah, and she's asking, "Do you think I'm missing anything?"

THE COURT: Yes, she's asking him for his input into this letter.

MR. DEARDEN: Yeah.

THE COURT: Before...

MR. DEARDEN: The cover letter.

THE COURT: ...she sends it.

MR. DEARDEN: Yes. Not the report itself but the cover letter.

THE COURT: Yeah. All right. And the next one?

MR. DEARDEN: Then he says - the reply from Mr. Rancourt...

THE COURT: That's his reply.

MR. DEARDEN: Yes. He says, "It's perfect."

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Voir Dire

THE COURT: And number seven. Ah, I see. She's just saying, "Thank you for updating." That says - that's simply the follow-up. Then there's something behind the - oh, that's the report itself of the Student Appeal Centre 2008 Annual Report.

MR. DEARDEN: Yes.

THE COURT: In which they raise the issue of discrimination in the fraud system.

MR. DEARDEN: The academic fraud, yeah.

THE COURT: Yeah. Actually, they cross.... And then, we have eight.

MR. DEARDEN: So, Ms. Gervais had sent a link to the University of Toronto's Varsity newspaper article.

THE COURT: Yes.

MR. DEARDEN: And Mr. Rancourt says, "Beautiful again. Shows how pathetic the Fulcrum is.", which is the student newspaper at U of O.

THE COURT: Okay.

MR. DEARDEN: And Tab 9, Ms. Gervais is asking Mr. Rancourt what he thinks of her much delayed blog post. This will eventually be the December 17, 2008 Student Appeal Centre news item that was published about Professor St. Lewis' report.

THE COURT: All right. And ten. All right. Anything like this I should - the problem I have is that naturally, counsel

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usually knows what is coming in and they can prepare for it and so, I want - are there other documents of this type you will be introducing?

MR. DEARDEN: No, sir. There may - there will be another volume that I'll be producing and it is of media reports and it's like the previous set of volumes. We can give them to you. I'm gonna be asking...

THE COURT: Yes.

MR. DEARDEN: ...Professor St. Lewis about it but we can give you volume...

THE COURT: Yeah. I should...

MR. DEARDEN: So...

THE COURT: ...take a look at it. It's just - it makes - I mean it's very difficult to - not - when one has not the help of the - one of the parties to....

All right. So, we'll take the break until two then.

MR. DEARDEN: Okay, thank you, Your Honour.

ADELE MERCIER : Monsieur le juge...

INTERPRETER: Your Honour...

ADELE MERCIER : ...est-ce que vous me permettez une dernière question?

INTERPRETER: ...will you allow me a last question?

ADELE MERCIER: Will you allow me a last question? I promise I will be silent for

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the rest of the time. It's my last question.

THE COURT: Based on that promise, I will allow it.

5 ADELE MERCIER: Thank you. Your Honour, I'm new to the court. I've been an expert witness before but I have to say that my question is, you have allowed the jury to hear Camille Nelson. I understand that as
10 an expert witness, I don't have a right here but I don't understand how everyone in this room does not see that it brings the administration of justice into disrepute to allow the jury to hear the testimony of Camille Nelson while not
15 requiring the jury to hear the testimony that I have prepared that shows that much of what Ms. Nelson is saying is incorrect.

20 THE COURT: I suppose I'll repeat differently what I've already said. This is a trial between two parties. Our system in Ontario and in the common law provinces is to have a trial adverse - it is the adversarial regime. That is the
25 Court starts not knowing anything and it is up to the parties, and only to the parties, to present the evidence they wish to present to advance their case. All
30 right? It will - it happens often, usually much earlier in the day, that defendants will default, either they will

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never filed a defence at the outset. At that point in time, evidence will be adduced only by one side and unfortunately, if there is evidence there somewhere in the world that would tend to say otherwise, the Court doesn't hear it. Sometimes, it's in the - after the filing of statement of defence but for some reason, the defence defaults or abandons. In this particular case, which is more unusual, it is after the trial has decided that the defendant moves out. So, one of the parties has decided not to present evidence. Therefore, what - as unfortunate as it is, there's only one party and then it is to the party who has the onus of proving certain things to put forward sufficient evidence to convince the Court, in this case the jury, of its position but the Court does not know and look for evidence or does not try to find different evidence. It's the parties' decision. They live and die with their decision. Mr. Rancourt decided not to present evidence and nobody can present evidence on his behalf. All right. Thank you.

MR. DEARDEN: Your Honour, am I permitted to just add one thing to the record in light of what Miss Mercier said about Miss Nelson and that is that I was going to

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challenge, as you know, Miss Mercier's qualifications to be an expert witness and I had enormous amount of evidence about how bias she would be in favour of Professor or...

THE COURT: But that's neither here or there. I understand you've put that on the record. I don't know what I would have decided if - but unfortunately, Mr. Rancourt has decided to forego any chance of getting a favourable decision on that aspect. Two o'clock.

ADELE MERCIER: May I answer Mr. Dearden, sir?

THE COURT: No, no, you may not. I mean it's - it would be perpetrating a hopeless situation here. All right? Thank you. So, I'll take this one, number 3 and I'll take - the last one was - that was put up would be...

MR. DEARDEN: It's another Volume 3, Your Honour. You...

THE COURT: Another Volume 3.

MR. DEARDEN: ...you'll have a Volume 3 Book of Exhibits and a Volume 3 Trial Book of Exhibits.

THE COURT: Thank you.

MR. DEARDEN: Or a Trial Book of documents rather.

R E C E S S

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Voir Dire

U P O N R E S U M I N G :

5 THE COURT: All right. Well, I had
occasion of reviewing these, Mr. Dearden.
So, let's look, first of all, at this
Volume 3, which was the emails and I have
- I don't think you can introduce these
without identifying them as being proper
emails by the defendant and Ms. Gervais
and - well, at least from - by the
10 defendant. So, unless you have it
somewhere in the discoveries or you have
some other ways, this witness can't tell
us this is an email sent by Mr. Rancourt
on such and such a date. I haven't heard
15 any evidence. So, identification is a
problem of these - of this and in so far
as the press releases, I have the same
thing. If it's to show that the defendant
said all these bad things, you still have
20 to prove that he said them and a newspaper
article is not enough to do that.

MR. DEARDEN: No, Your Honour, you're in a
liable action here.

25 THE COURT: Okay, but that's why I'm
putting it to you...

MR. DEARDEN: Yeah.

THE COURT: ...so that you can try to
convince me otherwise.

30 MR. DEARDEN: Well, let me deal with them
one at a time. The Volume 3 Book of
Exhibits that has emails between Miss

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Gervais and Mr. Rancourt, those emails - those February 2011 emails, I have and will be reading in testimony on the examination for discovery of Mr. Rancourt about those emails.

THE COURT: Where he has admitted sending them?

MR. DEARDEN: Well, he's given answers. He's given written answers about them.

THE COURT: No, but that's what I'm saying. You understand you have to identify them and you're going to identify them that way, is that right?

MR. DEARDEN: Yeah, I'm putting - I mean I don't have it memorized, Your Honour, what exactly - in fact, I do remember. You know, this one there, the Crying with Joy, the best X-mas present ever, I've entered it as an exhibit, as you can see, it's Exhibit 13. I put it to him and I say, "Why was this, for instance, the best X-mas present ever you got?" And he gave me the answers on it. So, there's no issue that he sent the email. He's giving...

THE COURT: Well, right now, there is.

MR. DEARDEN: But right...

THE COURT: Okay?

MR. DEARDEN: Yes, there is. So, could we perhaps make this Volume, at least Tabs 1 to 4, an exhibit for identification...

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Voir Dire

THE COURT: Yes, we could.

MR. DEARDEN: ...as opposed to 11.

THE COURT: We could do that.

MR. DEARDEN: And when I get to the read-ins, what I don't remember, Your Honour, is the second tranche of emails, which is Tabs 5 to 10, is how much of those I would've read into or I would've questioned Mr. Rancourt.

THE COURT: Okay.

MR. DEARDEN: I'm pretty sure I did most of them but I mean obviously, I'm gonna remember the one about Crying with Joy, I love you.

THE COURT: Okay.

MR. DEARDEN: You know best X-mas...

THE COURT: Well, that may be but as I say, so unless I - we can introduce this, if the purpose here is simply to have the witness say, "No, I never - I wasn't aware of these before, any of these before." But we'll have to identify them at a later time so that they'll have to be filed, subject to identification with - the jury shouldn't get them, should know what they say. I don't know how we're going to do that because if it turns out that some of them, as you say you're not sure about all of them...

MR. DEARDEN: Let's pull them back. That way, could I do this, Your Honour, is that

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I say to Professor St. Lewis, you have this Volume 3. We're not gonna - we're gonna wait till the read-ins to be able to enter it as an exhibit but can you tell me, without us going to the jury with Tabs 1 to 10, were you ever aware that Mr. Rancourt was having these exchanges with Ms. Gervais?

THE COURT: Okay. So, if an answer is no, then whenever it comes...

MR. DEARDEN: Yeah.

THE COURT: ...it comes then who - the ones you'll be able to identify, we can put to the jury.

MR. DEARDEN: Yeah, and that will only be after the read-ins.

THE COURT: Yes.

MR. DEARDEN: Yeah.

THE COURT: Well, that's fine.

MR. DEARDEN: So, that would be Thursday afternoon.

THE COURT: But you can do that as you're reading, you can specifically when you're doing the read-ins, refer them to that so that they understand what you're doing but that's fine. Now, what about the newspaper articles?

MR. DEARDEN: Well, Your Honour, I'm gonna put as a global question to Professor St. Lewis that she located all of these tabs that you find in Volume 3, that she

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Voir Dire

5 herself located all of these publications
that reference her. Okay? And then, what
I'm doing with this is you recall last
week, there was an email from Mr. Rancourt
to, you know, a hundred plus reporters and
he attached a Statement of Claim. I'm
gonna do the same thing with the Statement
of Defence. He sent out a blast email to
about a hundred reporters in the
10 mainstream and then another 50 or so
student newspapers with the Statement of
Defence and then, ask her - ask Professor
St. Lewis what the impact was, that this
defendant is drawing attention to her - to
15 the fact that he called her a house Negro
and she's becoming notorious with this
kind of communication that he generated.
He generated it. It's unheard of - I've
never seen it in 35 years that a defendant
in a liable action who knows his conduct
20 is under scrutiny to the day the jury
makes a verdict, would proactively try to
bring attention to the defamatory
statements or terms that he's used against
the plaintiff.
25

THE COURT: But my concern is, is that in
- I can understand that if the evidence
is, well, I made a search of my name and
looked at media reports and found all of
30 these articles that mention my name and
some of them referring to or most of them,

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if not all, referring to this - these
allegations that were made by Mr. Rancourt
in his blog and depending on what - you
know, I don't want to be technical but
what the reporter has reported Mr.

Rancourt said, it's one thing - just to
allow it in there in its entirety, it may
be prejudicial here. It's obviously
something that comes out of his campaign
of publication, as you say, but how do
we.... Because the jury will have to
obviously come to the conclusion that
everything that is attributed to Mr.
Rancourt and these - which the newspaper
writes he said but - and I haven't read
them all.

MR. DEARDEN: No, I wasn't intending on
taking the jury, Your Honour, to any
interview in hope of what he said. These
- this is what he generated.

THE COURT: They can't...

MR. DEARDEN: He generated this product in
Volume 3.

THE COURT: Can I then - maybe with the
direction that that's the only use they
can make of it.

MR. DEARDEN: Yeah.

THE COURT: All right. Okay.

MR. DEARDEN: It goes to his conduct.

THE COURT: Okay.

MR. DEARDEN: Of his defence.

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5 THE COURT: That - as - that that was
generated - that you - that they may find
and that all of this was generated by him
and that it has - that they can find that
it had an impact as to his behaviour, on
the plaintiff and as to his malicious
conduct. All right.

MR. DEARDEN: Yeah.

10 THE COURT: But I'll tell them you can't,
from there, extrapolate that everything
that's said, that Mr. Rancourt said is he
actually said it.

MR. DEARDEN: In fact, I'm not even
drawing their attention to anything...

15 THE COURT: No, but...

MR. DEARDEN: ...he said.

THE COURT: ...I mean, they'll have it.

MR. DEARDEN: Is quoted to say.

20 THE COURT: They'll have it with them. I
just...

MR. DEARDEN: Yeah.

THE COURT: ...want to make sure we're
fair here, that the evidence that goes in
is only admissible evidence. All right.

25 MR. DEARDEN: Agree.

THE COURT: Bring the jury.

CLERK REGISTRAR: So, just to clarify,
Volume 3 of Book of Exhibits is no longer
Exhibit 11?

30 MR. DEARDEN: Correct.

CLERK REGISTRAR: Okay. All rise.

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Voir Dire

...JURY ENTERS THE COURTROOM (2:10 p.m.)

CLERK REGISTRAR: All members of the jury
are present, Your Honour.

THE COURT: Thank you.

CLERK REGISTRAR: You may be seated,
please.

THE COURT: You may start.

MR. DEARDEN: Your Honour, did you want to
say a word about...

THE COURT: All right. We...

MR. DEARDEN: ...Volume 3 of the Book of
Exhibits?

THE COURT: ...the Book of Documents, the
last Book of Documents that you received,
which is called - which is noted as being
Book of Exhibits Volume 3, we'll take that
back from you and we'll introduce that
evidence at a later time in a different
fashion.

MR. DEARDEN: Yeah.

THE COURT: And I'll have a few directions
to give you on those when the time is
appropriate.

MR. DEARDEN: Q. So, Professor St. Lewis,
this Volume 3 that we've marked for identification and
we're gonna deal with when I do what we call the read-
ins of Mr. Rancourt's examination for discovery.
There's 10 tabs in here and they are emails exchanged
between Ms. Gervais and Mr. Rancourt and my question to
you with respect to all of them is what knowledge did
you have that these exchanges were occurring during the

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1 dates that they occurred, prior to Mr. Rancourt
publishing Exhibit 3 to this libel action, which is the
first article at issue here?

A. I didn't have any knowledge of them.

5 Q. Okay. Now, Professor St. Lewis, do
you have Volume 2 of the Book of Documents, which is
where we left off on Friday?

A. Yes, I do.

10 Q. Okay. So, Volume 2 of the Book of
Exhibits rather Book of Exhibits of Professor St.
Lewis. And you remember Tab 37, for instance, this was
an email from Mr. Rancourt to student editors, talking
about your lawsuit and saying summer issue, back to
school's newscap and those other emails that were sent
15 to reporters?

A. Yes, I do.

Q. Okay, and then we did get to Tom
Speers' article of The Ottawa Citizen, which is at Tab
35, June 24, 2011.

20 A. I have it.

Q. That's the online version and the
print version was at Tab 36?

A. Yes.

25 MR. DEARDEN: And then we will now, Your
Honour, if I could, enter as a new
exhibit, the Volume 3 of the Trial Book of
Documents, which contains a number of
newspaper articles, which I'm going to
premise by asking Professor St. Lewis if
30 she'd search for and located these 27 tabs
of articles?

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A. Yes, I did - sorry, yes, I did.

MR. DEARDEN: So, Your Honour, I intend to take Professor St. Lewis to some of these tabs, not all of them, but does Your Honour wish to indicate to the jury the use that's being made of these articles?

THE COURT: Well, first of all, possibly you can tell us, when did you make the required search? Was that done at one point or...

A. At, at different points.

THE COURT: ...approximately?

A. At different points, because these are actually articles that are coming out over the course of the three-year period and so, some of them I saw more than once. I also had - I was paying attention to what was happening to me. I was increasingly concerned. So, I was searching for myself and I came across these various things. I certainly - at the same time, the other thing that would happen on occasion is that people would send the article to me. They would bring the article to my attention and say, you know, this has been written about you. So, they were a range of ways in which the articles came to my attention, but when, at this point in the litigation, when things came to my attention, I now looked for them. I went to see, well, what, what was the full

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article? What was - where is it and what was said about me? Because I was increasingly anxious.

THE COURT: All right. So, ladies and gentlemen of the jury, newspaper articles, *per se*, cannot be introduced into evidence at the trial to prove the truth of what is written in the newspaper article. So, there are - there's a limited use you can make of this. First of all, these articles, you can look at them and possibly in reviewing them in relation - that exhibit in relation to the whole of evidence, you may determine that they were generated by the defendant. For example, as a result of his communication with the media, *et cetera*, so that they were generated by the defendant and they then - if you come to that conclusion, you may use that element of evidence on the issue of the possible malice of the defendant in his actions and also in relation to damages, for example, the negative impact on the plaintiff and so on. So, that's the only use, though, that you can make of these articles. You cannot read them and find that any elements is - proves or anything that's said in there proves anything for or against either of the parties. All right?

MR. DEARDEN: So, may we mark this as

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Exhibit Number 11, Your Honour?

THE COURT: Yes.

EXHIBIT NUMBER 11: Book of Articles -
produced and marked.

5 MR. DEARDEN: Q. So, Professor St. Lewis,
still on the Tom Speers' article that he wrote on June
24, 2011 for The Citizen, if we look at Tab 2, we have
the Edmonton Journal picking up that story?

A. Yes, we do.

10 Q. And Tab 4, we have the Regina Leader
Post picking up that story?

A. Yes, we do.

Q. And Tab 5, we have the Victoria Times
Colonist picking up that story?

15 A. Yes.

Q. And Tab 6, there's this article called
SLAW is Canada's Online Legal Magazine, you see that?

A. Yes.

20 Q. And there's reference to the Tom
Speers' Ottawa Citizen article by this blogger, this
legal blogger?

A. Yes, a part of the article is
extracted in the centre as a quote.

25 Q. Okay. And Tab 7, McLeans.ca mentions
The Ottawa Citizen article?

A. Yes, in the, in the last paragraph, it
references that - some of the content of the article.

30 Q. And going back to Volume 2 of your
Book of Exhibits at Tab 37 that I referenced earlier,
this is communications by Mr. Rancourt with university
student newspapers. Do you recall that email sent...

Joanne St. Lewis - in-Ch.

Voir Dire

A. Yes, the one...

Q. ...June 21st?

A. ...entitled "News Suggestion"?

Q. Yes.

A. Yes.

5 Q. So, we have at - again in the Exhibit Book, the Trial - or rather the Trial Book of Documents, Tab 8 - so the next tab we were looking at, is The Charleton, which is who - which university's newspaper?

A. Carleton University.

10 Q. Carleton, and flipping to Tab 10, there seems to be a story I wrote for The Charleton last week, at that document at Tab 10?

A. Yes.

15 Q. And the Varsity is whose university's paper?

A. University of Toronto.

20 Q. So, let's go to Tab 16, and there, there is a report on the second page about your lawsuit, correct?

A. Yes, there is.

25 Q. And, I think Tab 8. Okay. And then I'm going to - I have another - a new exhibit, it's not in the book. This is an email that Mr. Rancourt sent to a number of media, July 22nd, 2011 at 4:06 p.m. News, "Rancourt Files Statement of Defence in Joanne St. Lewis Lawsuit", statement of defence posted to web and background here, and he provides a link and - for his information.

30 MR. DEARDEN: So, could we enter that as

Joanne St. Lewis - in-Ch.

Voir Dire

the next exhibit?

CLERK REGISTRAR: Exhibit Number 12.

EXHIBIT NUMBER 12: Email dated July 22, 2011 at 4:06 p.m. - produced and marked.

A. Thank you.

MR. DEARDEN: And as Exhibit Number 13, Your Honour, I want to enter a similar email, but this time it's to student newspapers and student union people. It's an email sent July 22nd, 2011 at 4:25 p.m. and it's - again, it's his Statement of Defence that he's drawing their attention to.

EXHIBIT NUMBER 13: Email dated July 22, 2011 at 4:25 p.m. - produced and marked.

THE COURT: Is that - okay, maybe you can tell me, how is this different from the other one?

MR. DEARDEN: This is the defence, Your Honour. He had done blast emails to reporters with the claim. He did - when - with the claim, and then when he files his Statement of Defence, he sends a link to it to all these reporters.

THE COURT: But no - okay, then maybe it's - I have something here, which seems to be the same. The Statement of the Defence, and he indicates it's posted to the web, and....

A. The persons it's going to are different.

Joanne St. Lewis - in-Ch.

Voir Dire

THE COURT: Oh, okay.

A. One, one set is to the mainstream media and the other set is actually a, a cross - it's a, a cross-section, and more university-based media of different types including student media.

THE COURT: Okay, yeah, okay. So, that's...

A. Yeah.

THE COURT: ...the difference. One is - so 12 is to the media, the public, more general media, and the other one is more directed at university publications.

MR. DEARDEN: Yeah, the 4:06 p.m. email, Your Honour, is like the Ottawa Citizen and the radio and TV broadcasters and the 4:25 p.m. is to student editors and student union representatives.

THE COURT: Thank you. That's the difference, it's the time and the recipients. Okay.

MR. DEARDEN: Yes.

Q. And Professor St. Lewis, in the Trial Book of Documents, this Volume 3 Trial Book of Documents, which has all these articles that you located, Tab 9 is an Ottawa Citizen report of the Statement of Defence?

A. Yes, it is.

Q. And Tab 11 is a Canada.com - so online article, again by The Ottawa Citizen reporter, Nico Cockburn, that was reporting on the Statement of

Defence?

A. Yes.

Q. And Tab 12 is a National Post article, reporting on the Statement of Defence.

5

A. Yes. It's that article.

Q. Now, where's that date on this National Post? Oh there...

A. It's at the....

Q. ...next page.

10

A. Yeah.

Q. July 27, 2011.

A. Yeah.

Q. Okay.

A. Mm-hmm.

15

Q. And then Tab 13, the - what is this? Saskatoon, is it? I don't know what city. Star Phoenix is...

A. It's Saskatoon...

Q. Saskatoon?

20

A. ...if you go by the little weather symbol in the - next to the sort of masthead thing, so...

Q. Yes, okay.

A. ...it says Saskatoon, 10 degrees.

25

Q. So, they pick up that report on the Statement of Defence, and Tab 14 is the Vancouver Province?

A. Yes.

Q. And Tab 15 is the Montreal Gazette?

30

A. Yes.

Q. Again reporting on the Statement of

Joanne St. Lewis - in-Ch.

Voir Dire

Defence. And then Tab 17, different date, August 21st,
is a report by The Ottawa Citizen again on this case?

A. Yes, it is.

Q. Okay. Tab 18 is Canadian Accredited
Independent Schools, reports on your case, and picks up
the Nico Cockburn Ottawa Citizen article...

A. Yes, it does.

Q. ...on the Statement of Defence, right?

A. Yes, it does.

Q. Okay.

MR. DEARDEN: And I want to enter
extracts, Your Honour, of the Statement of
Defence, just to highlight for the jury
some of the statements that Mr. Rancourt
pleaded in his Statement of Defence, which
he's conveyed to these reporters. So,
could I enter a partial copy of his
Statement of Defence as the next exhibit,
Your Honour?

THE COURT: Yes.

A. Thank you.

CLERK REGISTRAR: It's Exhibit 14.

EXHIBIT NUMBER 14: Statement of Defence
extracts - produced and marked.

MR. DEARDEN: Does Your Honour have a copy
of that exhibit...

THE COURT: Statement of Defence, yes.

MR. DEARDEN: Yeah.

Q. So, paragraph 24, the second line,
Mr. Rancourt pleads misrepresentation of one's academic
research is academic fraud. Paragraph 26, Mr. Rancourt

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Voir Dire

says that the plaintiff's 2008 report for the university about the 2008 SAC report has infringed the rights of minority students to be protected from discrimination. And if you flip to the next page, members of the jury, please, paragraph 27, little two i's, is Mr. Rancourt's making the statement, "The plaintiff's attempt to pass an internal report as an independent report as constituting intellectual dishonesty." And roman numerals 14 in that same paragraph on the next page, Mr. Rancourt is repeating what he had written in a December 2008 U of O Watch article where he says, "I predict that St. Lewis is in line for a promotion to associate professor soon." And the next page - ignore the next page, please - even ignore the next page. I'm going right to paragraph 57, the second sentence of paragraph 57 on page 19 of the Statement of Defence.

"The plaintiff, by her professional behaviour in her interactions with broadcast media in 2008 gave herself a known black professional woman of widespread general reputation in the systemic racism matter of the 2008 SAC report for serving her employer over acting along lines of strict - over acting along lines of strict professional ethics and responsibility."

These are some of the things that he said in his Statement of Defence, Professor St. Lewis?

Joanne St. Lewis - in-Ch.

Voir Dire

A. Yes, they are.

Q. And what impact did that have on you when you discovered that Mr. Rancourt was emailing hundreds - to hundreds of reporters or - let's put it this way, over a hundred reporters, student and mainstream, soliciting them to write stories about you?

A. I was just heartsick. It, it - the statements about the report were untrue. They were unfounded statements. I had never denied racism. I had never done the things that he said in the report, and now, this was the way in which I was gonna be seen. All of these people, getting this document, repeatedly suggesting that I lacked integrity, that I was unethical, that I did not have the students' concerns, and nowhere in there was he actually talking about what I'd actually done. It had - there was a complete disconnect and realizing that now, across the country in a number of different places, people were gonna see me as this kind of person, who - which not only is not who I am, but it wasn't what I had done in the report. It wasn't what I'd actually done.

Q. Okay.

MR. DEARDEN: Let me enter another exhibit. It's an email that Mr. Rancourt has sent to the Ottawa Citizen reporter, Mr. Cockburn, on August 29, 2011 at 11:49 p.m. Which exhibit, Mr. Registrar?

CLERK REGISTRAR: Exhibit Number 15.

EXHIBIT NUMBER 15: Email dated August 29, 2011 at 11:49 p.m. - produced and marked.

CLERK REGISTRAR: At 11:49?

Joanne St. Lewis - in-Ch.

Voir Dire

MR. DEARDEN: Yeah, yeah.

A. Thank you.

Q. And this Exhibit 15, Professor St.

Lewis, Mr. Rancourt is asking the Citizen reporter to
5 consider how the Citizen can cover this development in
the St. Louis case. How did that make you feel?

A. As, as this kind of campaigning
mounted, I just felt powerless. There, there wasn't
anything I could do once the communication went out. I
10 mean, please cover this, this development - this
repetition, this constant repetition of the same false
message and it just kept building and building and, you
know, in particular, since Mr. Cockburn had covered the
story already, I knew he was sending it to someone who
15 might well take up the invitation to cover it. This
is, you know, that gives a legitimacy. Every time
mainstream media in particular covered the story, that
means - the average person reads these things and says
well, there must be something there. It must be true,
20 and given that my position is that it's false, like not
in a part of it, the whole thing is a false
construction of what I did, who I am, and even what the
content of the report is. It was just - it's like
being in a trap, you know, like in some kind of
25 distorted mirror of your own life, and you can't get
out of it and other people have been drawn into the
distortion, and you can't stop them. Like, they're -
because Nico Cockburn, when he's responding to Mr.
Rancourt, isn't, isn't trying to do me harm. They -
30 when they're covering the story and saying it's
newsworthy, they're not - they're not trying to harm

Joanne St. Lewis - in-Ch.

Voir Dire

me, but that's what they're doing. The end result of
living your life, trying to go to work, trying to go to
school, trying to be in front of my students, of having
this knowledge - I live in Ottawa. This is the largest
5 circulating paper. This is a paper with 300,000 people
reading it. I don't know how to tell you what it's
like when something comes out about you and you, you
have to come out of your house. Your neighbours have
read it, right? It's just been in the paper. You're
10 in the grocery store. I, I live here. I, I live here,
and, you know, many - my neighbours don't know what I
do. They know who I am, but they don't know what I do.
This is how they're - for some people, this is the
first time they're even understanding who I am, as a
15 professional person, and, and who that person is in
these - in that Statement of Defence, in these things,
it's not me. It's just not me.

Q. And let's go to another publication,
which is Tab 38 of the Book of Exhibits, Volume 2.

20 THE COURT: Which tab again?

MR. DEARDEN: Tab 38, Your Honour, of the
Volume...

THE COURT: Thank you, yeah.

25 MR. DEARDEN: ...2 of the Book of
Exhibits.

THE COURT: Thank you.

MR. DEARDEN: Q. Should be a Law Times
article. U of O Law Prof Suing Colleague over House
Negro Remark, racial reference in a blog post by Denis
30 Rancourt at the centre of lawsuit. So, you see that,
Professor St. Lewis?

Joanne St. Lewis - in-Ch.

Voir Dire

A. Yes, I do.

Q. So, Law Times is what?

A. Law Times is one of the major legal newspapers. So, it's a specialty paper read by people in the profession. It covers things that are newsworthy and also will cover things that are happening in cases that, you know, we should be up-to-date on, that sort of thing.

Q. And Lawyer's Weekly is what?

A. It is also a major legal newspaper. Both of these papers have print versions and online versions...

Q. And if you...

A. ...and many of us...

Q. Sorry.

A. ...many of us get them pushed to us because it's, it's central for us to keep up-to-date, so...

Q. Who's the "us"?

A. The "us", as members of the legal profession, so I would say law professors, some law students, but it's more those who are already lawyers - lawyers, law professors, we would have this and it comes to us with, with taglines and summaries so that we know whether the, the article might even relate to our areas of work, but these are - I think many of us would consider it an essential thing, not to read every single time, but you do keep up-to-date. One of the ways to keep up-to-date is to read the Law Times or the Lawyer's Weekly, at least one of them.

Q. And paragraph - or Tab 39...

Joanne St. Lewis - in-Ch.

Voir Dire

A. Yes.

Q. ...of Volume 2 of the Book of Exhibits, Mr. Rancourt publishes in his U of O Watch, Suit with Racial Tones to Mediation, the Lawyer's Weekly, and he provides a link there to the Lawyer's Weekly article we just looked at?

A. Yes.

Q. Okay. And just to digress for a second, who is Ed Corrigan?

A. Ed Corrigan is a lawyer. He practices, I believe, in the area of immigration law in Ontario. He's a member of the Ontario Bar.

Q. And what has he written about you in relation to your lawsuit against Mr. Rancourt?

A. Mr. Corrigan - we have a listserv. They're various ways in which we organize ourselves as lawyers, and, and the Law Union is a network of those of us who do a lot of social justice work, the "us" again is a broad us. So, it's lawyers, law students, but it also involves social justice activists, so they'd all be part of this listserv, and he wrote into that listserv in support of Mr. Rancourt, but what was - he tied my - Rancourt calling me a house Negro to my contributing to why Mr. Rancourt got fired. I had no connection with that but suddenly there was this message that went out to, not just my profession, but these are really my closest colleagues in terms of some of the ways in which we communicate. The Law Union people are the social justice lawyers. And so now, this message went out to them that I had supported the university in a campaign against him, and that that was

why - so the house Negro statement was a retaliation. It was a way of naming this very horrible thing I had done to him, when that wasn't the case at all. He wrote the house Negro remark about my 2008 report, 5 which had nothing whatsoever to do with him. Nothing at all, and I can't tell you - because when I realized that a lawyer could read this combination of information he put out there and come to this very wrong conclusion, that's when I, I really started to 10 feel like really hopeless because it meant it was having - I didn't know Ed Corrigan. I didn't know this man. I'm not in immigration law, and for him to, to feel compelled to say colleagues, here's this really important thing happening. Here's this person 15 violating who we are. We should do something, sort of like this, to feel that there might be some kind of rallying cry. That was - that night was a really bad night. That was a bad night. I, I thought about that all evening and I went to sleep - I remember thinking, 20 like what are you gonna do? I knew I had to have faith that people who were in the Law Union, some of them knew me, but I thought there's a whole bunch of them I just don't know. I don't know who they are. This is a province-wide network and I got up in the middle of 25 that night and I, I threw up. I was so sick. The idea that people who had worked with me, that maybe didn't know me too well or people who might come to meet me, would see me through this lens that I, as a social justice lawyer, would actually campaign for somebody 30 else to lose their job, that that was the kind of person I was - I knew it was a lie, but I didn't know

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what to do about the lie. And then to realize that it was all - things were becoming so twisted that somehow what was clear to me, no one, no one in all of this stuff, no one was taking the time to actually read my report. No one was actually going back and actually reading what I'd written to see my recommendation one that says, "Do a systemic analysis." See my recommendation two and three saying fix the procedural flaws, see my recommendation nine, do an anti-discrim, to see that the students in December 2008 had actually, without any qualification, endorsed those recommendations. None of that was there. It was like a runaway train. It was so far and not just far from what I'd done, but far from me, and it was everywhere. It, it was everywhere I turned. It was broadly in the public. I'm not in Saskatoon. Somebody in Saskatoon's gonna have a view of me - great. But I'm living in Ottawa, my neighbours could, my friends could, my students can. Now I have to deal with my profession can, and by the time that happened with Mr. Corrigan, it was like, wow, it's right in the midst of where I've built my reputation. And I think that's why that night was so hard, because it was like I think the sharpest cut, the sharpest cut, 'cause it was so - it wasn't broad like the others. It was like a scalpel, you know, it was the sharpest one.

Q. And Professor St. Lewis, just for clarity, what involvement did you have in Mr. Rancourt's labour problems and his ultimate termination as a professor at U of O?

A. Nothing. Nothing. I didn't know him.

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Voir Dire

Q. Okay. And how did you learn that Mr. Corrigan had put out there to this Law Union list that the reason you got called a house Negro was because you were involved in the termination of Mr. Rancourt's employment at the university?

A. One of the - he sent it out to their whole listserv, and I'm not on that listserv, and one of my students, my former students [sic] who is now a lawyer or articling at the time, I can't quite remember which, emailed me what had been on the listserv and said this, this is what's been said about you.

Q. Okay. And continuing in our Book of Exhibits, Tab 40...

A. Yes.

Q. ...Volume 2, Book of Exhibits, what is that?

A. This is a page from another one of Mr. Rancourt's websites and it is a - it's like a list of an aggregate of all of the different media stories that relate not simply to this case, but to various matters he's involved in. Some of them are about me, but some of them are about the labour arbitration and other matters as well. Like, it's just a long list over a period of time of news coverage and, and when you go through it, you go all the way to the end. It's - sorry....

Q. It's okay. So, some of them are about you?

A. Yeah, some.

Q. He's keeping a running log of publicity?

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Voir Dire

A. Yes, with, with the links. They're, they're hot links. So, if you, if you were on that site for ease of locating, you could click on the link and go directly to the article.

5 Q. Okay. And there's other examples of coverage associating you with the term house Negro that we'll find in Volume 2 as well as - that's Volume 2 of the Book of Exhibits and Volume 3 of the Trial Book of Documents, correct?

10 A. Yes, and, and a number of them have headings that say things like my - the term house Negro isn't racist, you know, like, so they - anyway....

Q. Okay.

A. Yeah, let me just leave it. Oh, dear.

15 Q. And Tab - we're in Volume 2 still...

A. Yes.

Q. ...Tab 57.

A. Yes.

20 Q. Mr. Rancourt has sent out tweets about your case and you...

A. Yes, he has.

Q. ...correct? So, can you briefly highlight some of the tweets that he's sent out?

25 A. The tweets actually link to the press coverage. So, on the top of the second page, he is drawing people's attention to the National Post article that's about the case, and so he tweets, and there's the little bit lead to send them to that case. On the next page, there is again another tweet. It's the
30 middle of the page, 26th of June, and it's - it links to the SLAW article that we were talking about earlier,

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and then at the bottom of that page is another tweet,
and he - it's to the Citizen, and so he's - I think
when he's saying MSM, he's saying that mainstream media
- in other words, this is a legit story. Mainstream
5 media are covering it. You should go to this link.
It's just stunning, actually, just stunning.

Q. And there's more but you don't have to
go through them all.

A. Okay.

10 Q. You've identify - you found these
tweets and...

A. Yes, I did.

Q. ...that we find at Tab 57?

A. Yes, I did.

15 Q. Okay. Now what's he done on Facebook?
That's...

A. He...

Q. ...Tab 56.

20 A. Yes, just a second. On Facebook, he
is also - there are different things. Sometimes, he's
drawing attention of people to the media articles.
Sometimes, he is linking to his own U of O Watch
articles or his activist teacher articles. Other
times, like the very first post, he's linking to other
25 persons who are covering this whole story in a way he -
one of his partisan followers. So, he links to
Student's Eye View. There's this - it's a layering on
of the communication. So, it's like there can be the
National Post article, but then the National Post
30 article can be linked up into his U of O Watch, it can
be covered on the Student's Eye View, it can be

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Voir Dire

re-linked into the Facebook. It's then tweeted about, so there's these - it's sort of like not letting people have any way they can escape if they're in some way in a communications network with him, the story. This is
5 get to - so there's so many different - there were so many different ways, you know. It wasn't like a one door. It was multiple ways that, that he was continually drawing people's attention to it, and each of these - how would I put it - spaces, U of O Watch,
10 Activist Teacher, his Facebook, his tweets, they're all different communities. They're not all necessarily exactly the same people, so you can say, well, he's just repeating it to the same people. Not necessarily. And, and it just, it just kept, it kept going. You
15 look at the Facebook page and there's - there are a lot of commonalities between the page but what happens as well, is this is a different space for comments, so let's say that story was up on the U of O Watch. There may or may not have been comments there, but a
20 different set of people might have commented on the Facebook - still a version of the same story, so it, it was - it was this idea of bringing a community - sorry, a conversation with this false view of me. Like just layering it on and layering it on.

25 Q. Did you discover, going back to Twitter, that any of his tweets were re-tweeted?

A. I don't believe a lot - they're, they're a few tweets, but not a lot of them are re-tweeted. I think there were a couple of re-tweets and
30 the re-tweets, I don't know if you're on Twitter - the thing about the re-tweets is that it means when he's

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tweeting the first time, he has about 70 followers,
that means those 70 people have an opportunity to see
it but when somebody else takes it up as a re-tweet, it
would go to their followers, so if they have 50
5 followers or a thousand followers, they're now pushing
it into their communication screen and sending it out
even further. So, the re-tweets were another level of
re-publication. It sort of - I guess it - a way to put
it is it extended the reach of the message from the
10 original tweet to yet another group of people.

Q. And what we've put in Tab 56 and 57,
is that the - all of the tweets and all the Facebook
messages, or....

A. I don't - let me - I don't think - I,
15 I don't know.

Q. You've given a - you've selected some.

A. Yeah, I, I - these aren't all of them.

Q. Okay.

A. I don't - they don't look like all of
20 them to me but I, I - these are the ones just to give
examples of what happened.

Q. Okay. Switching now to a person named
Jeff Schmidt. Who is Jeff Schmidt?

A. I don't know Jeff Schmidt but what I
25 know of Jeff Schmidt is he's clearly a friend of Mr.
Rancourt's.

Q. And he lives where?

A. Somewhere in the United States.

Q. And what did - how did Jeff Schmidt
30 come into your life?

A. Jeff Schmidt wrote a letter that was

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Voir Dire

so incredible. He basically had a heading and a suggestion in the opening that he was trying to assist me....

THE COURT: Can you identify better the letter before...

A. I don't - I...

THE COURT: ...you tell us...

MR. DEARDEN: We're about to...

THE COURT: ...what it says?

MR. DEARDEN: ...come to it, Your Honour.

A. Oh, I don't have it.

MR. DEARDEN: I - we're - I, I do have it in the exhibits but I....

THE COURT: Yeah, but before going into the contents...

A. Okay.

THE COURT: ...I'd like to know the....

A. Okay.

MR. DEARDEN: Okay, so Tab 41, Your Honour, Volume 2 of the Book of Exhibits should be a U of O Watch publication of Mr. Rancourt entitled, "Author Jeff Schmidt Campaigns for Just Treatment of Professor Joanne St. Lewis, Student Senator Reports."

Q. So, Professor St. Lewis, can you take over?

A. This, this piece was - actually the full letter is sitting on, on the Student's Eye View, and...

Q. Who operates and manages that website?

Joanne St. Lewis - in-Ch.

Voir Dire

A. Mr. Joseph Hickey.

Q. Okay. And that's....

5 A. And he, at the time, Joseph Hickey was
a student senator. I - I'm not sure of his status now,
but, but I know he was a student senator at the time, a
member of the University of Ottawa's Senates and the
title is so - it's so false. "Author Jeff Schmidt
Campaigns for Just Treatment of Professor Joanne St.
Lewis." Few - I don't know this man and I certainly
10 did not ask for his help, but leave that aside, what is
really offensive is that the letter itself preceded to
degrade and diminish me as a black woman, as a law
professor, in the most - with no uncertain terms. It
suggested that I didn't know my own mind, that I wasn't
15 competent, and then...

Q. Okay, let's go to it.

A. Can we go to the letter?

Q. Tab 47.

20 A. Okay. I, I really - he writes this
Dear Allan letter, and, and I - honestly, the friends,
the friends - that's an issue for me. So, in his first
paragraph, he states his, his authority or credentials,
and he's done a book looking at the politics of
universities and I haven't read the book, so I'm not in
25 a position to, in any way...

Q. Let's go to what he said...

A. ...but...

Q. ...about you.

30 A. Yes, yes. So, just - so then he
chooses to - he says,

"Professor St. Lewis' hiring was a

Joanne St. Lewis - in-Ch.

Voir Dire

victory of the civil rights
movements but this victory should
not be a token statistic. It must
translate into fair and equitable
treatment of Ms. St. Lewis.
Instead, your institution has
given Miss St. Lewis the worst
possible treatment. Her law
school colleagues behave in a way
begrudging her hiring. Despite
her many years on the faculty and
her lengthy list of professional
service, they keep her at the
assistant professor level like a
new fresh hire out of graduate
school. Thus the University
treats Professor St. Lewis like a
second-class citizen, giving her a
salary incommensurate with her
service and institutional
recognition, lower than that
accorded to her peers who are
white. You are fully aware of
this as evidenced by the fact that
you have used Ms. St. Lewis'
vulnerable position to extract
obedient service from her such as
in 2008 when you wanted a black
person to rebut the Student Appeal
Centre public report accusing the
university of systemic racism.

Joanne St. Lewis - in-Ch.

Voir Dire

The intellectual dirty work that you drafted Miss St. Lewis to do for you in that case has caused her great embarrassment. You put Miss St. Lewis in the impossible position of having to play up the student report's limitations rather than its strengths, and yet not appear to be trying to please you. She tried her best to finesse that, but got called out for it. First, the Student Appeal Centre..."

And then it goes on to talk about the criticisms of the Student Appeal Centre. Then he goes on to talk about the release of the FIPPA documents, and then in the second line of that, "Your administrator - administration guided Professor St. Lewis to write a report aimed primarily at serving you in a damage control public image campaign..." And then he talks about Mr. Rancourt. Then he goes to the start of the next paragraph.

"It is sad to see Miss St. Lewis try to make the embarrassment go away by asking a court to silence Mr. Rancourt.

Miss St. Lewis knows that racism is an institutional process, yet rather than suing the institution that treats her unfairly and forces her to compromise her principles, she is suing an individual for publicizing her compromise."

Joanne St. Lewis - in-Ch.

Voir Dire

Then he goes on to talk about Mr. Rancourt, and then he calls my lawsuit futile. Then he says, at the start of the next paragraph,

"I was shocked when it was exposed that Miss St. Lewis' lawsuit is being sponsored by powerful organization..." And he just goes - then he goes on.

"In any case, now that Miss St. Lewis' professional dedication and services - service have been part of the public record, the University of Ottawa must, without further delay, promote her to the associate professor level. Indeed it is almost unheard of in North American Academe to be given tenure without promotion to the associate professor level. Your discriminatory treatment of Miss St. Lewis harms the status of equity and fairness at all universities, not just Canada's universities. Allan, please repair this wrong. I would like your answer before I consider how best to further campaign for fairness for Joanne St. Lewis."

Q. Okay. So, go back to Tab 41,

Professor St. Lewis. So, that was his...

A. Yes.

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Q. ...his so-called campaign for your
just treatment...

A. Yes.

Q. ...and that U of O Watch article Mr.
5 Rancourt publishes on November 21st, 2011, he
references University of Ottawa Student Senator Joseph
Hickey has reported this development related to the St.
Lewis-Rancourt defamation lawsuit, and that's the link
that you just read...

10 A. Yes.

Q. ...at Tab 47, and then Mr. Rancourt
provides other links, like to this lawsuit and the
pleadings and the Law Times article that we referenced
earlier.

15 A. Yes.

Q. And what was your response to this
publication at paragraph or Tab 41?

A. You, you mean my - how I felt, how I
reacted? I...

20 Q. No.

A. Or what?

Q. I'm looking at Tab...

A. Oh, okay.

Q. ...42.

25 A. What I did - there were two things. I
- the other thing I did was we wrote to Mr. Schmidt to
tell him that it was defamatory.

Q. And you also - I...

A. Yes.

30 Q. Well, look at Tab 42.

A. Yeah. And we also told Mr. Rancourt

it was defamatory.

Q. Right.

A. Yes.

Q. And why don't you just read that, that
5 Notice of Libel to take down....

A. Okay.

10 "Mr. Rancourt, last evening, you
posted a link to a letter written
by Jeff Schmidt that contains
false and defamatory statements
about Professor St. Lewis, in
brackets, the title, 'Author Jeff
Schmidt Campaigns for Just
15 Treatment of Professor St. Lewis.'
I'm demanding that you take down
this November 21st publication
immediately. You are well aware
that the headline to your blog is
completely misleading and
20 deceptive and that Mr. Schmidt's
letter is rife with defamatory
statements about Professor St.
Lewis. In addition to taking down
this blog, I'm demanding that you
25 apologize to Professor St. Lewis
immediately. Failure to do so
will be a consideration -
considered further evidence of
your malice towards Professor St.
30 Lewis and an aggravation of the
damages you have caused to her

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reputation."

Q. And what was Mr. Rancourt's response to that Notice of Libel and take down of November 22, 2011?

5 A. The article remains on his site to this day.

Q. So, he did nothing?

A. He didn't do a thing.

10 Q. But he actually did another thing, and that's what we find at Tab 43.

A. Yes. So, Mr. Hickey publishes another post and Mr. Rancourt links directly to it, and that says, "Author Jeff Schmidt Apologizes to Professor Joanne St. Lewis."

15 MR. DEARDEN: And that Student Eye View article is not in the Book of Exhibits but we have it as a separate exhibit, Your Honour, which we'd like to enter as the next exhibit.

20 CLERK REGISTRAR: Exhibit Number 16.

THE COURT: I'm sorry, exhibit now we're at...

CLERK REGISTRAR: Sixteen.

THE COURT: Sixteen? Thank you.

25 A. Thank you.

EXHIBIT NUMBER 16: Article from "A Student's Eye View" - produced and marked.

30 MR. DEARDEN: Q. So, Professor St. Lewis, on November 23rd, 2011, Mr. Rancourt publishes on U of O Watch, "Author Jeff Schmidt Apologizes to Professor Joanne St. Lewis. U of O Student Senator Reports,

Joanne St. Lewis - in-Ch.

Voir Dire

"Following his previous report, University of Ottawa Student Senator Joseph Hickey has reported the latest development related to the St. Lewis and Rancourt defamation lawsuit." And then there is this link,
5 which is the bold type, "Author Jeff Schmidt Apologizes to Professor Joanne St. Lewis." That's what you're holding, and what did Jeff Schmidt write?

A. Well, I mean it was termed an apology, but basically he continued to attack the university
10 through me for my status as an assistant professor and am I allowed to speak to the content of the letter in that regard? Or I don't....

Q. Well, you can tell the - what...

A. I'm just saying that...

Q. ...I'd like you to do, Professor St.
15 Lewis, is to point out how you felt when you read particular passages of this Jeff Schmidt apology...

A. Well...

Q. ...that Mr. Rancourt published.

A. Well, the, the most offensive part to
20 me is, I don't - Jeff Schmidt, claiming to be championing me and speaking about the treatment of my colleagues of me in the faculty, was such a distortion. I hadn't - I wasn't experiencing racism, and the - I, I
25 had not applied - I had not sought promotion. I hadn't been denied promotion. I hadn't sought it. So, to create this, this, I apologize, and then he says, I did everything I could to check. He points out that I'm to tell him that racism has not played a role in keeping
30 me at that level and I should tell him the real reason why the university has declined to promote me. I would

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be happy to apologize for my incorrect analysis. The entire thing was a ruse. The entire thing, to me, was meant to humiliate me. There's no other way for me to see it but that the - that, that when I was reading this, that somebody is saying this about me and he's claiming to help me. How is it supposedly helping me to publicize whatever your concerns are about me, if that's really true? No, it was part of a stratagem for his friend, Denis Rancourt, and it was blogged about by the partisan supporter, Joseph Hickey, for the purpose of getting me to stop advancing my legitimate claim that what had happened when Denis Rancourt called me a house Negro was racist. That was inappropriate language and it was based on no foundation at all and it ought not to have happened. And that's what Jeff Schmidt was doing. He was facilitating the defendant and that's how I felt. That's what I knew I was reading. I did not have the remotest feeling that this was someone trying to be of assistance to me. I felt this was someone who was trying to harm me.

Q. And Professor St. Lewis, if you go to Tab 43?

A. Yes.

Q. Okay? Now, this is - or 44, sorry. We were on...

A. Okay.

Q. ...43.

A. Yes.

Q. Next tab. So, this is another U of O Watch publication that reproduces a Black Law Students' Association public statement.

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A. Yes.

Q. And they've come out in support of you, and we're gonna come to that a little later, but...

A. Yes.

Q. ...look - can you turn to the third page?

A. Yes.

Q. So, Mr. Rancourt publishes a comment from somebody anonymous - I'm looking at the bottom of the third page there of Tab 44...

A. Yes.

Q. ...and this is a comment that Mr. Rancourt publishes that's supposed to be about the Black Law Students' Association public statement, and what's he done?

A. There's an actual link to "Author Jeff Schmidt Campaigns for Just Treatment of Professor St. Lewis." So, he tags the Black Law Students saying positive things about me and respect for my professional credentials, and assures that anybody reading that will temper it against this partisan letter and document that was written by his friend, Jeff Schmidt. It, you know, was too much.... Anyway.

Q. Okay. And - well, actually, while we're on the Black Law Students' Association public statement in support of you, at Tab 44 here, what involvement did you have in the production of that statement?

A. None.

Q. Okay. And let's go to another fellow,

named Steve Lendman.

A. Yes.

Q. Okay? Who is he?

5 A. Steve Lendman is another friend of the
defendant, Denis Rancourt.

Q. And where's he live?

A. Somewhere in the United States. I...

Q. Okay.

A. ...think Chicago. I'm not sure.

10 Q. And he wrote you at Tab 48, he wrote
you an email June 24, 2011?

A. Yes, he did, at...

Q. Tab 48.

A. ...5:22 in the morning.

15 Q. And what'd he write you?

A. He wrote,

"Response to your suit. How [in
quotes] 'noble' of you to sue Denis.
Imagine your motive is to suppress the
20 truth. He and I focus on it without
compromise. We discuss it together on
my radio program. I write about it
daily. I'm committed to spread it as
widely as possible. So is Denis.
25 What's your commitment? Denis is one
of the best. Shame on you for
subverting law and justice, especially
because you teach civil liberties and
social justice law. I doubt, like my
30 friends Francis Boyle and Marjorie
Cohen..."

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...and the last two persons are very well known academics in the field in the States.

Q. Okay, so back on June 23rd or thereabouts, Mr. Rancourt publishes a U of O Watch that linked your Statement of Claim...

A. Mm-hmm.

Q. ...and he sent out emails to people, and then lo and behold, you get this June 24th email from Mr. Lendman, and what do you know about Mr.

Lendman now? Okay, he sends you that email, which lets us know that he's committed to spreading it as widely as possible and so is Denis, what's your commitment? What's - what did you discover about Mr. Lendman?

A. Well, at one level, Mr. Lendman has his own blog and he has an online independent news show. He's interviewed Mr. Rancourt on the show more than once and Mr. Lendman is a very strong supporter of Mr. Rancourt. He has published a number of statements in support of Mr. Rancourt and the context of this case, including a longer - a much longer piece on - entitled, "Denis Rancourt's Struggle for Justice." And he has used - he's an - he is certainly in the category I'd call independent media, and there's a network for that and he has taken steps to widely publicize his supportive views of Mr. Rancourt.

Q. And Tab 49 of the Book of Exhibits is "Denis Rancourt's Struggle for Justice", July 11, 2012, written by Stephen Lendman.

A. Yes. Mr. Lendman's article, "Denis Rancourt's Struggle for Justice", actually went across a number of indi (ph) media in the States.

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Q. Okay, what's an indi media?

A. This - independent media sources, so I'm thinking of - what I mean by that, persons who have their own blog sites, newsletters, who may be specific in a, in an area of interest around law, social justice or a community of people, and they, they publish online, many of them very, very regularly and they have their own community of, of readers. This particular location for the publication of "Denis Rancourt's Struggle for Justice" was the most striking for me.

Q. Why is that?

A. Because back in July 20-12, it - I, I looked at the symbols on the site and I wondered who read this kind of site, who was reading about me. There's an image in the upper left corner with a swastika and history takes shape. There's a picture of Hitler. There's Synagogue of Satan. There's Hebrew or the Negro. I tried to imagine how any of those people could be connected to me and then I was really concerned because of the actual way in which - what my role was in Denis Rancourt's life and is - as they titled, struggle for justice, how that was being characterized. So, this article talks about the entire campaign that Denis Rancourt, they're seeing he's having struggles with the University of Ottawa, how they phrase it, but when you go to - you just have to count, one, two, three, four pages in, okay, they talk about me, right? And they're...

Q. Where are you? Is this...

A. Okay.

Q. ...is this at the top of the page that

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said, "Arab, Black and Asian Men and Women", is that page?

A. I don't think I'm on that one. Just a second. Sorry.

5 Q. Four in?

A. I think I...

Q. Or maybe I can...

A. Yeah, let me just....

Q. ...change pages well enough.

10 A. Maybe I should go through the....

Q. No. Publicly funded cannot sue? Is that the page you...

A. Yes, that's the page...

Q. Okay.

15 A. ...I'm on. And he calls - he actually says that what I'm doing, it shows - talking about me, that it shows rancour and malicious intent. It suggests a conspiracy to inflict maximum harm. It's not about the defamatory comments.

20 Q. Which paragraph are you on?

A. I'm reading one - like there's a part of one...

Q. Yeah.

25 A. ...then the second one, third one, fourth one, I'm reading the fifth one. It's just two lines. It shows rancour and malicious intent. It suggests a conspiracy to inflict maximum harm. It's not about alleged defamatory comments. It's - then it says, "It's an all out assault on a distinguished
30 principled academic. He deserves praise not persecution. St. Lewis allied with the wrong side.

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Maybe one day she'll acknowledge her mistake. So far, she shows no sign of relenting. Perhaps Rock eggs her on." But the, the thing, through this article, is that it suggests that what I'm doing is that I'm actually

5 harming him, that my goal - I wrote the Student Centre report and it had nothing to do with him, okay? I looked at a report on academic fraud in 2008. I had tabled that report. I'm in 20-12 and somebody in the process of defending him to a community of people,

10 'cause this, this was what stressed me out - who comes to this blog post, I thought to myself? Who are these people? I don't know. I don't know. I don't want to know. All I know is that I spent nights just thinking, I don't know who these people could be, like when this

15 first came out and I knew, I - it's strangers. Like whoever reads a blog is random. So, I put - I spent a while thinking when strangers would come up to me, like could this be one of these people? I - is it one of these people that think I'm persecuting him? Is, is

20 this what's happening here? And so, I was - it made me, for a while, somewhat paranoid, in the sense that I was frightened, concerned, worried who might have seen it, not knowing how to respond to it, and in all this time, Mr. Rancourt never published a clarification.

25 He's publishing all these things on his blog and he doesn't once say, by the way, let me really make it clear here, the reason I called her this word, because of his view of the word, is because I don't like what she did in the report, but she's got nothing to do with

30 my firing. So, there's a kind of - like to me, there was a recklessness, a, a kind of irresponsibility of

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not seeing the implications of saying these things
about me and allowing other people, like the Ed
Corrigan situation, except Ed Corrigan was a lawyer.
These people here are complete strangers to me. I
5 don't know where they are, who they are or what they
do, and to me, that's a problem. It said something
about how the combined message of what he was writing
about my report was being received by a wide range of
people, not only Mr. Lendman, but now Mr. Lendman,
10 putting it forward at another level to a broader
community of people, yet another kind of extension of
this distortion, and so that was challenging.
Challenging.

Q. You want a break?

A. I'm, I'm okay. I'm good. I'm...

Q. Well, I think...

THE COURT: No, we will...

MR. DEARDEN: ...I think His Honour was...

THE COURT: ...take a break.

MR. DEARDEN: ...going for that.

A. Okay. Sorry. Sorry, Your Honour.

...JURY RETIRES (3:19 p.m.)

R E C E S S (3:19 p.m.)

U P O N R E S U M I N G : (3:37 p.m.)

THE COURT: All right. Bring the jury.

MR. DEARDEN: Your Honour...

THE COURT: Ah, is there something...

MR. DEARDEN: ...I...

THE COURT: ...before we do it?

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MR. DEARDEN: Yeah, just one sec. I think we're - I can get Professor St. Lewis done today but we might have to go a little bit beyond four thirty but we're - really would like to finish her examination...

THE COURT: To complete?

MR. DEARDEN: ...in-Chief today...

THE COURT: All right.

MR. DEARDEN: ...if possible.

THE COURT: Let's try to do that.

MR. DEARDEN: Thank you, Your Honour.

CLERK REGISTRAR: All rise.

...JURY ENTERS (3:39 p.m.)

CLERK REGISTRAR: All the members of the jury are present, Your Honour. You may be seated.

THE COURT: All right, let's proceed.

MR. DEARDEN: Q. Professor St. Lewis, do you have Volume 2 of the Book of Exhibits?

A. Yes, I do.

Q. Okay. Could you turn to Tab 48 again, please? So, this is...

A. Yes?

Q. ...the Stephen Lendman June 24, 2011 email to you?

A. Yes.

Q. So, you don't know him before he sends this email, correct?

A. No, I didn't know who he was.

Q. Okay. So, can you then turn to Tab 33 of the same volume?

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A. Yes.

Q. So, the day before, June 23, 2011,
Mr. Rancourt sends out this blast email and if you
count 11 - from the bottom, so from where Justin
Sadler's Sun Media address is, go up 11 lines and...

A. I found it.

Q. ...and then go across, and who
received the Statement of Claim for Mr. Rancourt?

A. Lendman Stephen, all one word, at
SBCglobal.net.

Q. And then I wanted to do one more
Facebook message, and that's at Tab 56 of the same
volume and if you turn - like the first page is "Judge
Accused of Conflict of Interest", and again, there's a
blue sheet, and then the next one.

A. Yes.

Q. Okay? At the top, Mr. Rancourt sends
an email out September 24, 2011 or a Facebook message,
rather, September 24, 2011, and it says, "Consider
attending the motion hearing of October 5th, 10:00
a.m., Elgin Street courthouse, go to the civil
proceeding counter and find out the room number, in the
crazy case of defamation lawsuit against me."

A. Right.

Q. "Some details about the motion are
here. Seeking justice - self-defended but not giving
up against the big machine." How'd you feel when you
read his Facebook message that called your case a crazy
case of the defamation lawsuit against you?

A. It - I mean it was so off the mark of
not getting that the statement showed me that he didn't

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get that the statement he'd made, calling me a house
Negro, was really, really over the line, that it had
nothing to do about the report. It's not language
that's acceptable. At this point, to the best of my
5 knowledge, you Google house Negro in Canada, and you
get me. They - there's nobody else in Canada, black,
public, black person who's experienced what I'm
experiencing. We don't use it. We don't call each
other house Negroes. Much less for him to appropriate
10 Malcolm X and the context and everything else, and then
label me in this way, and then to write out to the
world at large, it's a crazy case, as if I'm the one
who's lost my sense of balance about what we're really
here to talk about. It's - it was just, just stunning.
15 Everything in this case has been like that, inverted.
I don't - I, I'm not real. He's the victim. I'm not.
I'm something else. I'm not a person. I'm not a black
woman. I don't have a reputation to defend. I'm a
cipher for something out of his imagination and this
20 was one more statement. This was early in the case.
This is in September 20-11 and it just went on in that
vein. The position never shifted, I think, for him.

Q. Okay. The first article in issue - so
it's Exhibit 3, U of O Watch, headline, "Did Professor
25 Joanne St. Lewis Act as Allan Rock's House Negro?"
Second sting, "February is Black History Month in
Canada and the U.S. U of O Watch believes that it is
the right time not only to honour black Americans who
fought for social justice against Masters but also to
30 out black Americans who were and continue to be house
Negroes to masters. The term 'house Negro' was defined

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by Malcolm X in his famous the house Negro and the field Negro speech. See video below." What is Black History Month in Canada, Professor St. Lewis?

5 A. Black History Month has evolved to be the signal moment where we, as a black community, participate in and talk about our contributions to the public life of Canada. We, we provide information about history that we've experienced, what we've contributed. There's a lot that goes on in schools and
10 in workplaces around this. The whole idea is also to acknowledge that we have a distance to go, that part of the reason we do Black History Month is by providing this information about who we are and our experience and our history in Canada as a, as a whole, as part of
15 Canadian society, that that also will help to displace and uproot racism, that it's going to make for more diversity and more inclusivity and more respect for the black community.

20 Q. And what involvement have you had with Black History Month events? Briefly.

A. Okay. I'm just pausing because it's probably one of the central things that I do in, in my career. Over the course of my career, there has not been a Black History Month where I'm making at least
25 four or five presentations. I have organized workshops. I have - on more than one occasion, I was the keynote speaker, opening Black History Month for the Ottawa Black History Month Committee that we have here, the association we have here. I have done this
30 across the country in different ways, giving keynote presentations. I have also been invited on more than

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one occasion, because in the government department,
they - Black History Month is one of the initiatives
that they celebrate, and on more than one occasion, I'm
talking about in a given year, I would be called in to
5 speak to a particular department about issues related
to Black History Month and there are different themes
that people raise, but I've, I've done things for a
wide variety of persons. This past year, for example,
I do do some of my Black History Month speaking outside
10 of Canada, so this year, this past Black History Month,
I was in Vermont speaking at a private college where I
was giving a keynote looking at issues of black history
and, and racism in, in a comparative way between Canada
and the United States.

15 Q. Okay. So, when you read paragraph one
and two - numbered paragraphs one and two of Exhibit 3,
that outed you during Black History Month, what impact
did that have on you?

A. What - the way the statement,
20 particularly the number - the second statement is set
up, is it creates two types of people, right? On one
side, you have the persons identified as worthy of
being honoured, committed to social justice, who are
doing these wonderful things, and on the other side,
25 you have the house Negro, but sting number one says,
that's who I am. I'm not the social justice person.
I'm not the person who's been honouring and, you know,
respecting people in my community. I'm the opposite,
so I found it - I actually found it quite - both
30 painful and insulting actually. The insulting part was
really Black History Month is an initiative of the

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black community. What it is, its purpose, how it's -
you know, how it's being expanded and evolving is, is
one of the initiatives as a community that we're very
proud of, as something that's become very established
5 within our society, and so to think that this single
individual suddenly has another purpose that he's going
to impose on Black History Month on top of everything
else, and that he is in a position to assess our
contributions within our community was really painful.
10 And when I put that in the context of - by the time I
did the report, that I'd received a number of awards
from my community specifically because I contributed.
Some of my Black History Month, those awards were being
given to me in Black History Month events, a number of
15 them. And so, it, it not only misstated who I was,
lied about me, but it, in a sense, tainted the meaning
of the month for me, because now the month, for me, is
attached to the day that Denis Rancourt called me a, a
house Negro, right? Black History Month, for me,
20 changed in 20-11. It, it, it no longer was just
celebratory. It's not just what he said, it's what
it's done to me that now Black History Month, this is
what it is for me. It's attached to this experience
that I've lived through for the past three years. He's
25 changed it. He's changed its meaning for me in a
personal way.

Q. And the photograph that he used, first
of all, did he get your consent to use that photograph
in Exhibit 3?

30 A. No, he didn't.

Q. And what is the - do you recollect

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where that photograph was taken?

A. I believe that photograph was taken at a panel that I was doing for the Law Society of Upper Canada in Black History Month, the year or so before. It's like the layering, you know. Layering.

Q. And in paragraph four or sting four of...

A. Yes.

Q. ...Exhibit Number 3, Mr. Rancourt publishes that, "The SAC of the Student Union of the University of Ottawa today released documents obtained by an access to information request that suggests that Law Professor Joanne St. Lewis acted like President Allan Rock's house Negro when she enthusiastically toiled to discredit a 2008 SAC report about systemic racial discrimination in the university." And he followed that up with Exhibit 4, paragraph number eight. "I did not say that Professor St. Lewis acted like a house Negro because she is black."

A. Thank you.

Q. "I said it because it was reasonable to conclude in the matter that she acted like a house Negro and because it's my reason opinion she acted like a house Negro. She did so while attempting to discredit a 2008 Student Union report that alerted the university to its now more than evident problem of systemic racism." And he's got all kinds of links. What impact did it have on you to be referred to as acting as Allan Rock's house Negro?

A. I really found this to be the most profound insult I've received in my professional

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career. I - the suggestion that at the time I wrote
this report in 2008, that I would not have been able to
understand, identify and analyze whether systemic
racism was prevalent, the suggestion, statement that I
5 would deny it, especially when it involved
vulnerability of students, but even more than that,
it's not what I did. I did see it. I leapt over the
inadequacies of the student report to make
recommendation one and say, "Do a systemic analysis."
10 I leapt over the inadequacies of their analysis of the
procedural fairness and I made recommendations around
procedural fairness. In fact, in 20-10, the university
developed an accelerated academic fraud process with
guidelines that flowed out of my supporting fully the
15 student's voice. The students did not have a problem
in December. I have no idea what happened between
December 2008 and February 20-11 that instead of
writing about their concerns of systemic racism,
they're busily looking at me with the report whose
20 recommendations they apparently have no problem with.
But certainly, what he did here, I saw as a completely
unwarranted attack, but worse yet, I cannot see how
this language and calling me a house Negro has anything
at all to do with what he had to say. It has no place
25 in a - any kind of exchange of views between
professional colleagues. It has not place. And I
found it completely unacceptable and when you put it
together, it's the number of times. It's like - in
this one section, the sting 8, house Negro is there
30 like three times, because he might as well be talking
about witches. It's like there's no idea that each

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time I'm reading that word about myself, that that's something painful. That's something unacceptable. It's truly, truly not okay at all in any way, shape and form. They - there's no basis that could - it could be explained to me that it's okay. No basis at all. At all. And for a stranger? I don't know him. Stranger? I can't even begin to understand what was going on here, but I found it painful. I felt it insulted my integrity. I felt it called into question my competence in very fundamental ways, to do the report. And there it was online. I felt I had no choice, no choice at all. He left me no choice. When he, when he wrote this particular thing and he said, "Because it is my reasoned opinion that she acted like a house Negro", reasoned opinion? Based on what? I was - I saw no other way that I was going to be able to deal with this but to pursue the course that I have.

Q. And how did you feel physically and emotionally when you read the eight - numbered paragraphs that we have in Exhibit 3 and 4?

A. As I said, when I first just saw the tag, I, I knew that I couldn't read it, that it was gonna be difficult. So, when I found myself in this, this space where I, I was reading them back to back as we were preparing for the litigation, it was like a wave. It's a wave....

Q. Sorry, Professor St. Lewis, I'm having a hard...

A. It was like a wave coming of, of, of the statement, because it was - when I just saw the tag, I had no idea what was behind it, right? I, I

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5 didn't know whether it was gonna be - that's all - the
only statement and there's two more statements, but
when I, when I clicked on it, I'm seeing that actually
it's a lot. There - there's a lot here about me, and
10 then the link to the video, the whole thing, I found it
- everything, the characterization of the report, all
of these different things, very, very, very difficult,
and those first few nights were hard. I - it's not
like I knew I could go and just rub them off. I, I
15 would have loved to just go and rub them off the
Internet, you know, just rub them off, and I knew I
wasn't gonna be able to do that. I'm certainly
knowledgeable enough to know that what's there has a
longevity, has a scope. I immediately - because this
20 is February. I was teaching. I now look back on
people trying to tell me about this thing and I
realize, oh my goodness, I'm teaching. I had to go
into work, and I'm, I'm, I'm thinking, wow, like what,
what does it mean that my students are gonna be
25 thinking about me? Like how do I - how do I address
this? As a professor, particularly as a black woman
professor, want to be seen as a professor in a
classroom. I don't wanna be notorious for other
things. I wanna be able to make choices about how I
30 professionally present myself. And, and this whole
thing robbed me of the same thing that other people
have. You know, this is the main lens, but at the time
that I read it, I could already see that I - whether I
wanted to confront it or not, I was gonna have
credibility problems that were going to arise somehow
because of what was said. The word is known. It's,

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it's known amongst us and it has a very specific meaning, and I knew then that if people didn't necessarily know me, it was gonna telegraph a whole set of other things about who I was. And, and the fact that that might be happening within my own community, because that would be the first step of where there would be the knowledge of the term, was very painful for me to know, very painful.

Q. Now, let's look at some comments that Mr. Rancourt has posted on some of his U of O Watch articles. Tab 50 of the Book of Exhibits, Volume 2. It should be a June 23rd, 2011 U of O Watch, U of O Law Professor Joanne St. Lewis sues, and at the top...

A. I have it.

Q. ...if you turn to page 2 of 16, so at the bottom of page 2, you - 14 comments and unfortunately, they're not numbered, and it looks like - not looks like, the date the comment is posted appears under the comment, so that first one by...

A. Yes.

Q. ...anonymous, is June 25th, 2011, and let's go to the eighth comment, which starts on page 7 of 16.

THE COURT: Isn't it of 17 or am I...

A. Seven of 17? You're saying 16.

MR. DEARDEN: Seven of 16, sorry.

A. I have 7 of 17.

MR. DEARDEN: Seeing if everybody's....

THE COURT: At Tab 50, it's of - it's all of 17.

A. I - our thing says 17.

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THE COURT: Are you at 50?

A. Just describe what it is to me, so
that I can...

THE COURT: Is this at Tab 50?

MR. DEARDEN: Tab 50, Your Honour.

A. I'm having the same problem, Your
Honour, so just describe what - which one - the one
that's....

Q. Now what did I say?

A. You said 16, but we've got 7 of 17 at
the top.

Q. Well, what I...

A. Are there 17 pages or 16?

Q. Okay, I'm not blind. The one I'm
holding says 7 of 16, but I'm...

A. Okay.

Q. ...it should work out.

THE COURT: Well, let's hope we have the
same one though.

A. Yes.

MR. DEARDEN: Yeah, we, we do. How'd that
happen? 14 of 17 - okay, this is really
going to affect me.

A. Okay.

Q. Okay, so I'm looking for the one on -
yeah, okay, 7 of 17.

A. Okay.

Q. So, you see where you see the date,
June 27, 2011?

A. Yes, and the other....

Q. We're looking at the one under that,

so this - as a hail Mary...

A. Yes, I see it.

Q. ...said....

A. Yes.

5 Q. Okay? "It's a sad fact..." So, I'm
calling that the eighth comment.

A. Okay.

10 Q. Assuming that I can count. Just don't
assume. "It is a sad fact of life that people of
colour of minority status, those excluded from the
halls of power, always have the option to be included
at the master's table on his term. Here in the U.K.,
this is called being token." Okay? And if you go down
to the bottom - the last paragraph,

15 "In my own experience as a woman
of South Asian origin, I have
found institutional racism to be
regularly covered up by the token
black person of colour in a
20 position of equal opportunities
officer. Colour is then used by
the power elite to silence any
attempt of exposing their
wrongdoing. E.G., we are not
25 racist. Look, one of their own is
telling you so. Such a person in
the role of token is accepting
high salaries, secure position,
and they mouth whatever the
30 misbehaving elite of the
institution want them to say."

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This person goes on, calls you a patsy. If you look at page 8 of 17, that first paragraph,

"I do not know enough about the role Ms. St. Lewis had been playing to make any direct comment on her, but to attack Professor Rancourt when he had been upholding the highest standards of pedagogical and professional integrity makes her misguided to say the least, and leads me to suspect that she probably has been a bit of a patsy. Okay, okay. She does admirable work with the poor and dispossessed women in the Congo, and she supported the students of colour obtaining their law degree, but how does she work with the elite holding the reins of power?"

And ends up by saying, "Where was she when he was being arrested and put in handcuffs? Hiding under the master's table where she's positioned herself - where has she positioned herself since?" So, this comment's posted by Mr. Rancourt on his U of O Watch blog, and it has what impact on you when you read somebody who says they're from the U.K., United Kingdom, calling you a token, a patson [sic] - a patsy and you're hiding under the master's table?

A. They're a stark - actually part -

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partly in the same place I was on the Lendman struggle
for justice blog and the Corrigan one, that her attack
on me is in part because she thinks I'm connected to
Mr. Rancourt's grievance with the university. And - so
5 the first part is that she's got this wrong
supposition, but then to know that this is another
racialized woman, in another country, and she says, I
don't know enough about Ms. - the role of Ms. St.
Lewis, but it tells you the potency of the word within
10 the racialized community, that the word is actually
substituted for knowledge, and so I read the words that
she's using, calling me a token, talking about my being
under the table, talk - you know, crawling out from the
under the - this - how does it work? I'm hiding under
15 the master's table, calling me a patsy. These are all
- and dismissing the work that I've been doing for
years because in fact she doesn't know what the work is
that I've been doing for years.

Q. And there's...

20 A. Sorry.

Q. ...another one. If you go to page 9
of 17, this is underneath the date, July 1st, 2011,
English Work said and English Work says a lot.

A. Okay.

25 Q. We start with - do you have it?

A. You've - yes, I've got it. It says
that English Works is replying to another blog here.
Second paragraph,

30 "You feel that she - that if she's
only one in that big cowardly
custard number of 999 faculty

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members (all yellow in my
opinion.) Oops, look over my
shoulder. Am I being racist?
Cowering under the master's table
- we should be gentle with her
when she crawls out from under,
not to, ahem, support Professor
Rancourt who's been suffering
years of intense persecution that
would have broken the mind, body
and spirit of most people,
bracket, a testament both...."

And it goes on talking about who he is.

"No, Professor St. Lewis crawls out to distinguish
herself in front of the master who pays her salary."

And she then goes on to say, "She chooses to take on
the role of adjudicator between the oppressor, backed
by the entire resources of an institution, at an
individual fighting for his livelihood and his
reputation." Again - and then talks about his
teaching. And then she makes a reference I didn't
quite understand to pipers and tunes, despite the fact
that she says I should. She - top of the next page,
she says, "I could equally use other terms to confer
the same thing, like patsy, token, house nigger." So,
she calls me...

Q. And the next one.

A. And then - yes. So, she calls me a
house nigger. Then she said,

"So bloody what if Professor
Rancourt used the expression house

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nigger? Her action in joining hands with the master and adding her kick to her master's blows on someone with much less power and resources to defend themselves with only proves Professor Rancourt right in a succinct delineation of her character and motives."

And then she makes some reference to stick, which she thinks - then she says, "It seems...", the last paragraph, second sentence, "It seems she left it behind...", talking about my sense of - "What - where is her sense of justice? It seems she left it behind as she struggled to please the many masters grading her efforts on the long but not so lonely - remember the 999 others track to being accepted to being the big wig servant of the big wig master. Thus she exemplifies a system of subservience that Professor Rancourt has tried so valiantly to oppose, expose and introduce alternatives to."

Q. And the paragraph....

A. "On see - on seeing Professor St. Lewis' travesty of justice and embodiment of bad faith, Sojourner Truth must be turning in her grave!"

Q. And you skipped a paragraph, Professor St. Lewis, where she asks, "Not, not only that, but I have to ask, is she really a professor of law?"

A. Oh.

Q. "What? The law of the jungle? That Might makes Right?" And then goes on.

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A. Yes, sorry.

Q. But she's not done. She - English Works, that starts at the bottom of page 10 of 17 - okay?

5 A. On July - yes, this is...

Q. Okay? This is where she has the "Baa, Baa, Black Sheep."

A. Yeah. This is on July 5th, she posts again - again in response to someone else who refers to
10 the persecution that she sees Denis Rancourt experiencing, and at the top of the next page, she says, "Well, people, I was strolling by a Field near her window..." the "her" being me, "...early this morning, and this is what I overheard. Baa, baa, black
15 Sheep, you are a bad girl. To get some ribbons and a better position, you deserted your own fold. Baa, baa, black sheep, oh don't you collaborate with the master who measures us, who weighs us, who checks our teeth and grades us, those of us who need as high bloody
20 grade too often he fails. Baa, baa, black sheep, it's true we may have made a mistake or two, but so do the white sheep, yet the master lets them through. Baa, baa, black sheep, while the master's getting rich, we're having to sell our blood or oil to pay his high
25 course fees for innocent mistakes. He quickly fails us and we face going back to our fold in Africa, in China, in the Middle East, broke, disgraced and failures to boot. Baa, baa, black sheep, be true to our best. Think of Malcolm X and dare to speak truth to power.
30 Rancourt's a good example. Pursuing the endless possibilities your daddy talked about was not meant to

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turn you into a chicken or turncoat." And then she has a P.S., "I would love to sing this under Ms. Lewis' window, but I'm far away! As a child growing up in England, I was taught this nursery rhyme. I haven't sung it for a long time."

Q. And I'll just point out, Professor St. Lewis, that at Tab 51, if we can just flip to it, his Activist Teacher website...

A. Okay.

Q. ...English Works publishes a comment and has there a different version - close, but different version, of her baa, baa, black sheep...

A. Yes. There's not - the, the content isn't as different as - it's more the postscript. So, she again says she'd love to sing it under my window, and she says she was - I haven't sung it in a long time. Then she says, "Any takers for the job? Any rappers, musicians out there?" But it's the same date as the other post, July 5th.

Q. So, Mr. Rancourt posting these comments on two different websites, the baa, baa, black sheep one, what's that do to you?

A. It's so mean and vicious and wrong. Just wrong, you know? He, he controls his websites. He can decide what's on them or not and to, to have it there is like humiliating. It's like meant to - you know, there's so many different insults. This single poster said I'm a patsy, I'm a turncoat, I'm a - and like Malcolm X, she moves back and forth between the house Negro, house nigger label because in fact, they're linked and this is a stranger to me. She

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doesn't know me, and yet she feels so somehow inspired
or incited by what he's written that she writes about
me to the world at large. And I, you know, calling me
a chicken, turncoat and for the life of me, I don't
5 know why she wrote in, your daddy talked about - 'cause
I don't know this person but to even roll in my father
or the fact that someone how - on top of everything
else, I've what, disgraced my family and disgraced my
father? I, I, I, I'd really - just - I really - for a
10 person who knows nothing about the issues around the
SAC report or anything else, I, I don't know. I mean,
all I could see is that she has relied on whatever
she's read and whatever she's read, has persuaded her
that I'm beneath contempt.

15 Q. And then the last one with English
Works, Professor St. Lewis, would be page 13 of 17...

A. Yes.

Q. ...still at Tab 50...

A. Yes.

20 Q. ...and let's just go to the bottom,
the last sentence.

A. Yes.

Q. "For Ms....

A. "For Ms. St. Lewis to take this course
25 of action exposes her for the opportunistic fraud that
she is. I sincerely hope she gets laughed out of her
job as a teacher of law and social justice." That's -
it's on - at the top, it says 13 of 17, and it's the
last sentence on July 28th, 20-11.

30 Q. Yeah. And at - we - at Tab 52,
English Works is located in Huddersfield, West

Yorkshire...

A. U.K.

Q. ...United Kingdom.

A. Yes.

Q. Is what you found?

A. Yes.

Q. Correct?

A. Yes, that's what I found.

Q. And Trial Book of Exhibits now, Volume

10 2B.

A. I don't have that.

MR. DEARDEN: Mr. Registrar?

A. Thank you very much.

THE COURT: Do I have a copy of 2D [sic]?

15

MR. DEARDEN: Should be Exhibit Number 6,
Your Honour.

THE COURT: All right, let's see here.

Exhibit 6, 2B. Oh, I heard 2D. Okay.
Sorry.

20

MR. DEARDEN: To be or not to be.

A. Okay.

THE COURT: And you - did you refer to a
tab number that was there?

MR. DEARDEN: No, 'cause I'm...

25

THE COURT: Oh, okay. Fine.

MR. DEARDEN: ...confused. I've got to
find out what I want. I'm looking for
English Works' comment on July 2nd, 2012
to the June 30th, 2012 U of Watch - U of O
Watch article and I had it at Tab 42
update.

30

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5 A. But it would be in tab - it would be
in 2A. It's in 2A, wouldn't it be? 2B starts at Tab
25, and you need Tab....

Q. Ah, no, I am right.

A. Oh, okay.

Q. Okay. Thank you.

A. Okay.

Q. Oh, okay. So, we're at Tab 42, Volume
2B of the Trial Book and go to the last page...

10 A. Okay.

Q. ...of one comment posted by English
Works.

A. Okay.

Q. And that comment is, "What a
15 phenomenon you are, Professor Rancourt, a true educator
continuing the brave tradition of Socrates. What an
example to all the cowardly, service driven
intellectuals only concerned with feathering their
nest." So, this is his update on U of O Watch, June
20 30th, 2012 about his champerty motion, as we've been
calling it, to try to get your libel action dismissed.
He puts English Works' comment there, and I served Mr.
Rancourt a Notice of Libel and take down, which I want
to enter as the next exhibit, to take this down, so it
25 should be July 5th, 2012, 10:38 a.m.

MR. DEARDEN: What's the next exhibit, Mr.
Registrar?

CLERK REGISTRAR: Exhibit Number 17.

30 EXHIBIT NUMBER 17: Email from Mr. Dearden
dated July 5, 2012 at 10:38 a.m. -
produced and marked.

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A. Thank you.

CLERK REGISTRAR: You're welcome.

MR. DEARDEN: Q. So, I've notified Mr.
Rancourt to take this down and that he's defamed you by
5 posting this English Works' comment, and what did he
do?

A. He didn't take it down. It's still
there.

Q. And I gave him another Notice of Libel
10 that day, Tab 43. This is of the Trial Book of
Documents, Volume 2B, so Tab 43, he does a St. Lewis v.
Rancourt in a Nutshell U of O Watch blog, July 2nd,
2012 and says that he - the university asked a black
professor expert to assess the student report,
15 indicating responding - in a responding public report,
and at page 3 of 16 of that Tab 43, he says, in 2011,
Rancourt posted another blog article critical of St.
Lewis based on a newly released Access to Information
document. This second blog article was entitled, "Did
20 Professor Joanne St. Lewis act as Allan Rock's House
Negro", and then he quotes from it. So, he's repeated
the libel. I served him another Notice of Libel, which
I'll enter as the next exhibit.

CLERK REGISTRAR: Exhibit Number 18.

MR. DEARDEN: Number 18, and that's an
25 email from me to Mr. Rancourt, July 5,
2012 at 10:22 a.m.

EXHIBIT NUMBER 18: Email from Mr.
Dearden, July 5, 2012 at 10:22 a.m. -
30 produced and marked.

MR. DEARDEN: Q. And I indicate to Mr.

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5 Rancourt that he's falsely and maliciously published
the racist and defamatory statement, "Did Professor
Joanne St. Lewis act as Allan Rock's house Negro", and
I told him that, "You deliberately published that
10 Professor St. Lewis acted as President Rock's house
Negro is racist and outrageous conduct on your part,
warranting awards of punitive and aggravated damages.
Your malice in doing so is palpable and inexplicable.
In addition to taking down your racist and defamatory
statements, I'm requesting an immediate retraction and
apology to Professor St. Lewis." And what did he do?

A. He did nothing.

15 Q. Okay. And Tab - so now, we're back in
the Book of Exhibits, Tab 53. Do you have that,
Professor St. Lewis?

A. What is it?

Q. Tab 53 of...

A. Oh, 53. Okay, I'm sorry.

20 Q. ...53 of Volume 2 of the Book of
Exhibits. It should be an email of thoughts from
Thailand about lawsuit against your blog, May 19...

A. Just a sec.

Q. ...2011.

25 A. My, my version is marked up. Maybe
because it was notes. I need a clean copy.

Q. Well, do you have the Book of
Exhibits, Volume 2?

30 A. I'm saying that, but what's in front
of me is marked up with notes. This was mine. I - I'm
holding my own documents here.

THE COURT: Oh, so, yeah, okay.

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A. This is what I'm saying. I just want to be...

THE COURT: Yeah.

A. ...looking at a clean copy.

THE COURT: Sure.

A. Is that not correct?

THE COURT: Sure.

A. Yeah, okay. I'm just saying this, this happens to be my own working documents so.... Okay. Thank you.

MR. DEARDEN: Q. So, you recall,

Professor St. Lewis, I served a Notice of Libel on Mr. Rancourt on May 18th, 2011, regarding Exhibit 3, which is his February 2011 article...

A. Yes.

Q. ...and the day after that, he gets an email from somebody in Thailand.

A. Yes.

Q. And I'm not gonna read all this email, so we can move along here, but what's the impact on you when you find out that somebody is reading about what Mr. Rancourt is writing about you from Thailand?

A. I, I remember when I learnt of this and thinking, however - like I mean really, it was just shock. How did someone - because this is May 19th, 20-11, so I was trying to figure out how, from a blog post February 20-11, like a couple months before, that it's already gotten to Thailand. I had - just the idea that a con - like a conversation happening so far away amongst - I - all I remember is just going, Thailand. Like, exact - I didn't say very - I wasn't really

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thinking or analyzing. It was more like I kept
repeating, Thailand? With a big question mark and
really? Like how, how, how does that happen, you know,
and, and of course in the way, you know, having seen
5 the way things subsequently got pushed into the world,
but at this point, I, I didn't know. I didn't
understand how and I was just shocked. I was just
absolutely shocked. I did find it interesting,
however, that this person did say to him that using the
10 word "house Negro" was a problem.

Q. And let's now fly to Chicago, Tab 54.
Brian Leader's Law School Reports. What are those?

A. Brian Leader's Law School Reports
would be something equivalent to SLAW but in the United
15 States context. The two named professors there, they
both hold chairs at their universities and it's, it's
actually a very respected law report and what it does
is has blogging, sometimes small news articles, but
this one is read largely by legal academics in the
20 United States and I, I would assume also law students
as well might sign on to that particular law report.

Q. And he's reporting...

A. And this one, there's a connection
between - they're talking about two different
25 situations in the workplace, and then it says,
"Meanwhile, up the road a piece in Ontario, University
of Ottawa Law Professor Joanne St. Lewis is suing her
old colleague Denis Rancourt, a former physics
professor, for defamation. Rancourt called St. Lewis
30 Allan Rock's house Negro in his blog, U of O Watch."
And then it says, "Rock, a former political figure in

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Canada, is now the President of the University of
Ottawa. The post remains active. You can find it
here." So, this is July 1st, 20-11, and the thing to
note is which category - on the, the law school reports
5 has all kinds of different categories, but it's in
faculty news. What's making it newsworthy is not just
that it's a - it's, it's a defamation action, like the
sujutary. It's newsworthy because it's about a law
professor, so he - that's where you go to read
10 everything, from people's promotions - so in the space,
which might have people's promotions, somebody's just
written a great book, my - my being called a house
Negro is in that category of the, of the Law Reports.

Q. Okay. So, you're known in Thailand,
15 you're known in Chicago, you're known in other places
in the U.S. through Lendman and Jeff Schmidt. You're
known in the U.K. What's the impact been on your
course enrolment? Students have enrolled in your
course in the past three years?

A. I, I'm a professor who is known for
20 teaching in a couple of areas. Obviously, the social
justice but also because I, I use a particular
approach, a critical approach in my courses. They're
two observations I had. My civil liberties course,
25 prior to the defamation, on average had - this is a
seminar course, so an upper level, the most I had one
year was 28 students, but I'd say it was - it would
average around 20 students. That was kind of a
settling point and went a bit up in other years. After
30 this, the numbers dropped to 11 students.

Q. After this what?

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A. Being the posting of the February 11th blog post and in the space of - span of time of all of these different publications. I do teach other courses where there was not a noticeable enrolment drop but
5 that's because, for example, my legislation and public law course, there have to be three sections. The first year class is divided amongst the three sections, so nothing - the number would remain stable because the students are just getting like a dealing out a set of
10 cards, stand into those boxes. The, the other course that was really noticeable to me was what happened this year. I taught a course on professional responsibility and diversity. That's a combination of both my areas of expertise and the law school has expanded since the
15 February 20-11 block - blog article and yet, I had seven students in that class. Now, to explain something about the culture of the law school, it's really unusual for students not to take a course with a professor with practical experience in the subject
20 area. So, the fact that I - not just that I'm a law professor and that I'm a black woman law professor but the fact that I had been a benchler for over eight years would naturally have meant I - which is part of why I was teaching the course, that there would have been an
25 appetite amongst the students to be in a class with someone with that experience and practical capacity. I had seven students. The interesting thing is, seven is the lowest number of students I've ever had and to me, this is a much more mainstream course. So, even for
30 courses where I was doing African women and the law, and much more highly, highly specialized areas that I

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5 was offering my seminars in, I had more students. That
was pre - those courses were pre-, the February 11th
blog post but I'm saying, to me, I don't know what
other explanation, since I have increased my expertise
and capacity over this time period from February 20-11
to now. I've continued to be a person respected in the
field in terms of my - what - the work I do and my
workshops and things. It just makes sense to me, other
than an adverse impact from the publications of, of the
10 defendant and the reason I say that is it makes sense
to me. What student wants to run the risk of learning
about professional ethics from a professor who might be
unethical? Like why would you run the risk as you're
about to leave and go into the profession, that there
15 might be some - even if you weren't sure, would you run
that risk because what if it were true? Would you want
to actually have the framework of how you understood
your professional responsibilities to be taught by that
person, or would you just say, I'm not gonna take those
20 chances, and I think that's what's happened here. I do
think there's been an impact. I think students have
been less likely to talk to me, and they're more voting
with their feet in terms of concerns that they have
about the blog articles by the defendant. That's what
25 I think has been happening over the past few years.

Q. Okay. And Tab - and this is gonna
cover the book, Tab 55 of Volume 2, Book of Exhibits,
is an email of July 4, 2011...

A. Yes.

30 Q. ...to you from a former student.

A. Yes.

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Q. Right? And the part I'm taking your attention to or drawing your attention to, is you say in your email, "Hello Saron." and then the last - second last sentence, "Your note is a bright spot in what is a very challenging period for me. I truly appreciate your thoughtfulness. Please extend my gratitude to the entire executive." which is the Black Law Students' Association of Canada.

A. Yes.

Q. And in - what were you referring to about the very challenging period?

A. Because in fact, they had written to me because of the publicity around my being called a house Negro. It was about The Citizen articles and the various - it was just - it was far and wide, and I think they wanted to let me know that they were concerned for me. That's what the period was. It was - this was one of those periods where there was a lot of communications happening in the public about the case.

Q. Which you found challenging?

A. Yes, I did.

Q. Okay.

A. Because....

Q. Go ahead.

A. I didn't - I was at a loss at the beginning part about what I was gonna do, even though I'd initiated a lawsuit, I just - it just - things just kept happening, and instead of them staying in one place so that I could wait to see what the court was saying, it just kept going and going and going. There

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was always something happening in the media. There was something happening out of my control somewhere. So, that's what I was - that was what I was referring to as saying that it was, it was a challenge, you know.

5 Q. And Professor St. Lewis, so that -
you've indicated some impact on student enrolment in your earlier testimony, the past few days, has talked about the effect on your teaching and what you think your students are thinking and all of that anxiety but
10 what effect has the defendant's publication had on your work environment and your ability to fulfill your duties at the law school?

A. When I, when I wrote back to Saron, that was in the summer after the initial blog post and the second one, and so his, his blog articles of
15 February and of, of the following month, and I - of May and I was holding my own. Then I started the school year, and for the first time in a long time, I was reluctant - not completely reluctant, but I was
20 reluctant to go to the orientation, because it's a big event, all the first years are there, and it was the first time I realized that there were gonna be people who would be seeing me in this context. So, first term, it's okay. I'm, I'm - I know this is going on,
25 but it's okay. Second term, so we're talking about 20-12, things keep being published and things are happening, and what happened for me - I'm the co-chair of admissions. I have been for a number of years. I'm one of three co-chairs who does the - who reviews the
30 admissions files, people who have applied to law school. My responsibility is I'm co-chair, admissions

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access. So, I'm the person who reviews all the files of the candidates who are coming in on special circumstances or various kinds of equality, social justice means, like they want us to think about that.

5 In any given year, I have between 325 to 190 or so of those to review. By the time I got to March, I was trying to teach, I was reacting to these things, I couldn't do it. I, I know I shouldn't use the word embarrassing, 'cause I know this wasn't my fault, but I

10 did feel embarrassed. I had to go to my vice-dean and say, you know, I can't, I can't keep up on this. I need my administrative load lessened, so I, I was able to finish my teaching, but the other administrative responsibility I had, which was those files, I only got

15 part way through them. I just - because it's not fair to people, right? They're - it's - I couldn't concentrate. I wasn't assessing them. I couldn't assess, so I just acknowledged that I wasn't able to do the job, and so I took an administrative leave. In the

20 meantime, things kept going and going and going, and so by the time we get to 20-13, to last year, said it was like a ton of feathers or a ton of bricks at the time, it was really hard. It felt, it felt like it was never stopping. I never had, I never had like a clear

25 months' peace where this wasn't going on, there wasn't some publication, where I wasn't in court listening to yet another time that apparently I've abused, abused the, the legal process or committed fraud. It was just unrelenting. And so, I went on medical leave in 20-13.

30 I was unable to finish my teaching last year. It was just difficult. I mean, I - see I'm the kind of

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person, I, I don't like to admit that I can't do things
and so, I was pushing myself to keep teaching, because
the other thing I felt was that if I, if I kept going
into the classroom and I kept teaching, it wasn't about
5 saying these words didn't matter, but it was about
showing that it wasn't right that it happened, that I
had my dignity about me and I wanted my job. I, I love
my job. I wanted my job. I wanted my life. I didn't
want to be in some space where all I could dwell on was
10 what was happening that I couldn't control. And I did
make the decision to go on medical leave and - so, I
was on medical leave last term. In, in the course of
that, I, I decided that it wasn't enough for me to just
have the break. I needed help, and so I sought
15 counselling and I saw a counsellor, Charlyne
MacCharles, and I talked to her about what had been
happening to me. I talked to her about all of the
different things, but mostly I, I was worried about
being too much of a burden to my friends and my family,
20 and so I talked to her about how helpless I felt. I
would try to - just, it was a space that I could hear
myself explaining things. One of the things I did was,
I was trying to explain to her how much like a tsunami
things felt, and so at that point, I decided - 'cause I
25 was also confused. I thought, like how come? You're
not a weak person. Like, how come you're on medical
leave anyway? Like what's happening, and I, I actually
did a timeline and I actually tried to put all the
events in one space, so I could visually see for myself
30 what was happening to me, and so that was - you know,
one of the things of, of having a counsellor is that

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you get some strategies and you get to think through different ways of approaching things and so I did. I talked to her about a number of the things that were happening to me as, as they, as they happened, and I, I, I do believe that I'm handling what's happened but it's - not every place feels or every interaction feels as safe as it did. I, I don't mean I was cavalier but I certainly wasn't a person who felt compelled to pay so much attention to what other people think. I've never worried about my reputation. I've always felt, you know, my reputation is built on what I actually do. So, when I did that SAC report in 2008, I was confident in what I did. I still stand by what I did. I think the recommendations were fine but through this whole experience, I've learned it's not enough. It's just not been enough. I, I - my whole reputation has been under assault for a period of three years, and the worst part of it is, it's not even founded on what I actually said. It's not even about what I said. I mean, I'd be willing to scrap that out, I can tell you. I'd be willing to have a debate with colleagues if somebody was saying to me, you know what, that, that idea of procedural fairness you've got there, it's all wrong. It's not - that's not what I've been - that's not what this is about. This is about me being some kind of collateral damage in his preoccupation with the university - a stranger to me, and I, I don't get it. I just don't get it. I, I, I don't get the unwholesome, unrelenting attention and preoccupation with me that's resulted in all of these blogs. I don't get the constant solicitation of people to look at

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this. I just - I, I am unable to actually understand what is happening to me and that's part of why I needed counselling, because from beginning to end to the moment I'm sitting here, I don't, I don't get it. I don't understand why this is happening to me, what the driver is and why it looks so distorted. I, I don't understand. I don't understand how another professional colleague could do this to me. I don't get it.

Q. So, Professor St. Lewis, you mentioned a timeline and we're gonna finish your testimony. I want to - we're gonna finish your testimony with you showing that timeline with - in two minutes, I want you to first address an incident that you experienced where a stranger came into your office. You had an encounter with a stranger who came into your office. Can you just tell the jury about that, please?

A. This would have been in the late fall, I think October 20-11. I was actually in the office as my research assistant on my, my project that looks at sexual violence in the Congo, that, at the time that was the project I was working on and the door was opened for the purposes of the meeting, and my - I'm sitting at my desk, my student's across from me and the door is behind both of us, and a person came into the doorway, and to be honest with you, not uncommon. Somebody's there, do they need help, directions, whatever. This person barged into my office. They were emotionally very, very excited. We both turn, and it took a while, because they were so agitated, for me to figure out why are they agitated. The conversation

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was going on in French, and I, I am functionally
bilingual. So, I was following them. I just couldn't
figure it out. So, it took a while into the - a little
- a few sentences or so in for me to figure out that
5 they were upset about Denis Rancourt. So, I went, "Is
[sic] this have something to do with my, my
litigation?" I said, "Well, I have legal counsel. You
should talk to my legal counsel.", because I certainly
wasn't gonna go into a one-on-one with somebody. This
10 person would not leave. It was this really
uncomfortable exchange for the two of us, my student
and myself, as this person was going on in this way.
As a consequence of this exchange, which I could not
anticipate whether it was gonna happen again, I went to
15 my dean. I spoke to Bruce Feldthusen and I told him
this had happened to me the evening before, because if
I recollect, it was some time after four thirty. So,
most people were gone from the office at the time. And
I described the behaviour. I made a report to our
20 protection services at the university about this
individual who I didn't know coming into my office and
we talked about what should be done and we made the
determination that what I should do is move my office,
because my office was on the third floor. Where I was,
25 was not a heavy traffic kind of area for the
professors' offices after work. So, the decision was
made for me to move, so I moved from the office that I
had to the office that's right next door to the dean on
the first floor, because the dean's corridor has -
30 there are different kinds of security options around
that corridor in terms of how early it shuts down,

5 traffic, visibility, all of those things, and I remain
in that office, actually. I'm still in that office
right now. One of the other things that came out of
that, because it was unusual behaviour, they - the
10 decision was made that something should be said to my
students and that was done by the dean, so I was - I
don't know what he said. I was outside of the room
when the dean spoke to my students because as I
understand the concern was that given this person was a
15 stranger to me, the possibility - because my class in
the evening - I taught from seven to ten at night, my
class in the evening was a class of about 79 students.
So, the possibility of a stranger just coming in and
sitting amongst my students without me knowing was
20 extremely high, and so I think - I, I believe what was
being said to the students or the conversation was
something around the issue of strangers and possible
problems in that area but the dean took responsibility
to, to do that on my behalf.

20 Q. Okay. What's your timeline? What is
that about?

A. Think about it as people do timelines
in, in work, where you're trying to figure out what you
have to do at a particular point in time. You even
25 have get charts and that - those sorts of things. So,
I just used a program so that I could enter into the
program all of the things that happened to me in the
litigation. So, I wasn't trying to enter when I was
teaching classes or my personal stuff, only trying to
30 sort and manage what the nature was of what was
happening to me, and what I did initially - let's see -

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yes - I initially, as I said, I did it right around the time that I took the leave but as I went through the process and I was on my, on my leave, and I found it a useful thing to think about, I - okay, where is it?

5 Let me see. Could I make it bigger? Where is it?

Okay. Why can't I - why did it go smaller?

ANASTASIA SEMENOVA: Click on the green...

A. Oh, sorry.

ANASTASIA SEMENOVA: ...to make it bigger.

10 A. Sorry.

THE COURT: I'll just....

A. There it is...

THE COURT: That's fine. I don't want the jury not to see it, so I'll...

15 A. Do you want a chair?

THE COURT: Do you still see it...

A. Can you see?

THE COURT: ...all of you, or is that at an angle where you can't see?

20 A. Could it be turned this way for them?

And I...

THE COURT: No, that's fine.

A. ...you want to look at mine?

THE COURT: But no, they never...

25 MR. DEARDEN: They only see the boxes.

THE COURT: ...are you all right in seeing...

A. We see...

THE COURT: ...this on - all six of you?

30 MR. DEARDEN: We can't read it, Your Honour. We only see...

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A. Yeah.

MR. DEARDEN: ...boxes.

A. Yeah.

MR. DEARDEN: Q. So perhaps, professor,
5 just give a sample of...

A. Okay, so just to give you a sense of
what I was doing, I was not trying to editorialize or
explain something that was happening. So, what I did
is all of the red ones were things that I saw as
10 connected to the defendant, so his blog posts and the
things of going to court, and then the blue, when
you're looking at it, are things related to social
media, the tweets and everything else, but I'll show
you what I mean about feeling like a tsunami because
15 this is 20-11. This is his - this one here, is his U
of O Watch post in response to this one, which is the
FIPPA document, okay? But this is what's happened to
me. I'm gonna take you through. The yellows are
mainstream media. So, this is what's happening. This
20 is the cluster. Things are clustering for me. Then
you keep going, you keep going, we're in 20-12. We're
in 20-12...

Q. So, the date's on the bottom?

A. The dates are on the bottom and also
25 at the top, for the month.

Q. And by month, okay.

A. And by month, so you can, you can see
what's happening and it just keeps going, and I stopped
in April, but the other way of understanding what, for
30 me, became an insight was that I just - I remember
feeling overwhelmed and I thought, why, why do I feel

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like this? And then this is why I feel like this,
okay? This is my life. These are the articles
happening. This is the court appearances happening.
This is me, for the last three years. Okay? There's
5 no point that you look at this and we do have a
printout of it, but there's no point at which, when
you're looking - you see, there's a, a block that says,
there's December, there's February - there's no block
where I have time off, where there's an empty space and
10 nothing's happening. There was always something
happening, which is why, like at a personal level I
realize this, this ton - even if one blog article or
one, you know, I should have been able to push my way
past that one Citizen article. No, it wasn't one
15 Citizen article or whatever. They tended to happen in
clusters. So, when something happened, it was like a
bunch of articles at the same time, so you could see
that happening. So here, this is a bunch. All the
gold are mainstream articles and all the purple around
20 them are the Twitter and Facebook and other feeds that
are picking up on them, and the red is me, either
something that he's posted himself, which may or may
not be triggering that, or somewhere in there, I'm off
to court listening to him. This - that's - and what
25 you're looking at there is June, July, August,
September, October, November, in 20-11. That, that,
that was my life. Okay? And so, that's why I'm saying
that when I was thinking about what it was gonna be
like for me to go into orientation at school, all of
30 that had already happened. School starts in September
and I realize that this is, you know, August. There's

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just been a cluster bomb essentially of mainstream media talking about me as a house Negro. Right? I'm trying to teach and build a relationship with my students and there's stuff that's happening around them, and they're even more into the new social media than I am, you know, just generationally, that's, that's the reality. So, this - it, it helped me to understand why, because I, I really was feeling inadequate. When I took my medical leave, I was thinking that maybe I wasn't, I wasn't being sturdy or I didn't have the right sense of balance, but when I did the timeline, the timeline helped me see, from a different perspective, my own experience, my own life, and other than the fact that I can say the colours on the timeline are pretty, beyond that, it did not look - it was not a pretty picture. Definitely not a pretty picture.

MR. DEARDEN: So, Your Honour, as the last exhibit to go in through Professor St.

Lewis, we've made a printout, a colour printout of the timeline.

THE COURT: So, I gather this will be 19?

CLERK REGISTRAR: That's right, Your Honour.

EXHIBIT NUMBER 19: Printout of the timeline - produced and marked.

CLERK REGISTRAR: Do you have another copy there or is this....

MR. DEARDEN: No, that's the only single copy I have and Your Honour, subject to any questions you have, that's Professor

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St. Lewis' evidence in-Chief.

THE COURT: No, that's fine. I don't have any questions. So...

MR. DEARDEN: So, may Professor St. Lewis be excused, Your Honour?

THE COURT: You're excused as a witness and we will resume tomorrow then at ten o'clock.

MR. DEARDEN: Yes.

A. Thank you. Thank you, Your Honour.

CLERK REGISTRAR: All rise.

...JURY RETIRES (4:55 p.m.)

MR. DEARDEN: Your Honour, could I also just keep you for one second? Can I also excuse from summons my expert witness that was gonna be on the limitation period, that's Bill St. Arnaud and can I let Mr. Doody know that Henry Wong and Stephane Emard-Chabot, who were summoned, could also be excused from their summons because...

THE COURT: Yes.

MR. DEARDEN: Okay, thank you, Your Honour.

...PROCEEDING ADJOURNED

FORM 2

Certificate of Transcript
Evidence Act, Subsection 5(2)

5

I, FRANCINE BOURQUE, certify that this document is a true and accurate transcription of the recording of Joanne St. Lewis v. Denis Rancourt in the Superior Court of Justice held at 161 Elgin Street, Ottawa, Ontario taken from Recording(s) No. 0411-CR36-20140520-101402 which has been certified in Form 1 by R. Commodore.

10

October 26, 2014

15

(Date)

Francine Bourque
(Signature of authorized person)
Videoplus Transcription Services ACT number 5542650147

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SUPERIOR COURT OF JUSTICE

B E T W E E N :

JOANNE ST. LEWIS

Plaintiff

and

DENIS RANCOURT

Defendant

P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE JUSTICE M. CHARBONNEAU
on MAY 21, 2014, at OTTAWA, Ontario

APPEARANCES:

R. Dearden

Counsel for the Plaintiff

SUPERIOR COURT OF JUSTICE**T A B L E O F C O N T E N T S****W I T N E S S E S**

<u>WITNESSES:</u>	<u>Examination In-Chief</u>	<u>Cross- Examination</u>	<u>Re- Examination</u>
MacCHARLES, Charlynnne	5	-	-
ROCK, Allan	10	-	-
MAJOR, Robert	31	-	-
LABERGE, Denis	73	-	-
BECKLES, Jacqueline Yvette	78	-	-
FELDTHUSEN, Bruce	86	-	-

E X H I B I T S

<u>EXHIBIT NUMBER</u>		<u>ENTERED ON PAGE</u>
R1	Email from Mr. Rancourt sent May 20, 2014	4
20	Book of Exhibits of Allan Rock	9
21	Book of Exhibits of Robert Major	31
20	22 Book of Exhibits of Bruce Feldthusen	85

Legend

[sic] - Indicates preceding word has been reproduced
verbatim and is not a transcription error.

(ph) - Indicates preceding word has been spelled
phonetically.

Transcript Ordered: June 28, 2014

Transcript Completed: November 14, 2014

Ordering Party Notified: November , 2014

WEDNESDAY, MAY 21, 2014

THE COURT: Good morning.

MR. DEARDEN: Good morning, Your Honour.

THE COURT: Before we proceed, I got a letter from, well, in fact, this morning, I opened my computer and there was an email from Mr. Rancourt, which was sent yesterday at 3:57 p.m. There's no indication he cc'd to you, but I...

MR. DEARDEN: No, I never received it, Your Honour.

THE COURT: So, I'm going to read this and file this as an exhibit. So, I got notice of this really, this morning, because I only read it this morning. So, here's what the letter says. First of all, it's addressed to the Regional Senior Justice McNamara.

"Your Honour, I wish to clarify my position with the court. Today in court..." - obviously, he means yesterday. He wrote this yesterday - "...the trial judge refused to let the jury hear my responding expert witnesses, the witness, Dr. Adele Mercier, and my witness, Hazel Gashoka. In the interest of justice, I have withdrawn my presence from the trial in order not to be used as a prop that would make it look to the jury as if I were being allowed to defend myself but I have not withdrawn my witnesses. I request my witnesses be allowed to testify and be cross-examined, even in my absence. The trial judge has my list of witnesses. I wish to inform my witnesses as soon as possible. Yours truly, Denis Rancourt, c.c. trial judge, Michel Charbonneau by email." All right, so this will be Exhibit R1. My first comment on this letter is this, is obviously for some reason, Mr. Rancourt thinks that somehow by

5 sending this to who he believes would be my superior,
there's some kind of little intimidation. He's
asking Justice McNamara to intervene. Obviously, Mr.
Rancourt doesn't understand that a judge - a trial
judge cannot be told what to do in a - in his
courtroom by the RSJ or by the Chief Justice of
Ontario or the Chief Justice of Canada. Only the
trial judge decides what happens in his courtroom
10 during a trial. So, I see this as an attempt at
intimidation, which obviously goes nowhere in the
circumstances. Secondly, obviously, Mr. Rancourt
does not understand how a trial is conducted. A
trial is conducted by parties to the issue presenting
- each presenting, one after the other, their case.
15 The plaintiff presents his evidence, the defence
presents its evidence and the way to present evidence
is by calling witnesses and questioning them in order
to obtain relevant answers to the questions in issue.
There are real impediments to start with these - with
20 the way that Mr. Rancourt is proposing that this
matter proceed. Besides the fact that our rules of
evidence and our rule of procedure, court civil court
procedures, do not allow this, there would be real
impediments. For example, what happens when there's
25 an objection to a question? In these situation, the
witness is asked to leave and we discuss between -
with the parties what to do, whether the situation -
the objection is valid or not. Other problems we -
how would we - how would the witness be questioned if
30 there's nobody to question them? Would - is it
simply the witness takes the stand and says whatever
he or she wants and then it's up to the judge or the

defence to try to bring him to the - what is relevant, et cetera? So, that's why, I suppose, all - for all of these impediments, that's why the rules are there but the fact of the matter is, I'm just giving these impediments as some of the reason why the rules are there but that's the way it has to proceed. So, this suggestion is untenable. Defence witnesses, in any event, are heard after the plaintiff's case has been in. So, any request to hear witnesses now makes no sense but even then, couldn't be done the way that is being proposed. Now, the defendant here is either in or out. He has chosen very categorically and told the Court that he has chosen to be out and he has indicated that this is done on some preposterous theory that if he remains in court, it would mean the jury would think that he is getting - somehow getting a fair trial from the court, while all the time he indicates that this trial court is simply a kangaroo court. So, I can't be in. That makes no sense whatsoever. It's illogical. It's so ridiculous and stupid. If you want to defend, you're present and you put in your evidence. Four, having chosen to take this position, I find that he has abandoned his defence and that necessarily includes sending some individual as his witnesses to testify on their own - on his behalf. So, the defendant's request in this letter is denied and the Court will not entertain any further request of this type from anyone. So, if anyone is here simply to make such a request, you may leave. Here, let's file this. And let's proceed.

CLERK REGISTRAR: Is that R1, Your Honour?

THE COURT: R1.

EXHIBIT R1: Email from Denis Rancourt, May 20, 2014-
produced and marked.

MR. DEARDEN: Your Honour, I'm not gonna do it today,
but tomorrow, I am gonna address a preliminary matter
that I'm gonna ask judge's exhibits be entered with
respect to some of the things that Mr. Rancourt has
chosen to publish about why he has decided not to
participate in this trial but I wanna deal with that
at the end of the day, 'cause I have Mr. Rock and Mr.
Major waiting outside and my next witness is
Charlynn MacCharles who will testify but the one
housekeeping matter, Your Honour, your Volume 3 Trial
Book, you need to rip out Tab 1 which will - of the
judge's? Oh. Apparently, that's been done for you.
So, that tab wasn't referred to, Your Honour, I
wanted it out. So, Your Honour, if we could call the
jury in and have Charlynn MacCharles as the next
witness, please?

THE COURT: Bring the jury.

MR. DEARDEN: Here. Charlynn, go ahead, I'm sure.

CHARLYNNE MacCHARLES: Yes?

THE COURT: No, oh, you're a new interpreter?

MR. DEARDEN: We're waiting for the jury.

THE COURT: Eh?

MR. DEARDEN: We're waiting for the jury.

THE COURT: Okay, that's a witness? So, the swearing
has to be done before the jury.

MR. DEARDEN: So, we can get the jury.

THE COURT: Yeah, he's gone to do that.

CLERK REGISTRAR: All rise.

...JURY ENTERS

(10:16 a.m.)

CLERK REGISTRAR: All members of the jury are present, Your Honour.

THE COURT: Good morning. All right, let's proceed.

MR. DEARDEN: So, Your Honour, I'd call my next witness is Charlynn MacCharles to be sworn in, please.

CHARLYNNE MacCHARLES: SWORN

THE COURT: I didn't get the full spell - your last name, is it M-A-C capital C...

A. C-H...

THE COURT: H-R...

A. H-A-R-L-E-S.

THE COURT: L-E-S? Thank you.

A. MacCharles.

THE COURT: MacCharles?

A. Yeah.

THE COURT: Okay. Thank you.

EXAMINATION IN-CHIEF BY MR. DEARDEN:

Q. Good morning, Ms. MacCharles.

A. Good morning.

Q. I'm just gonna briefly review your education and work history. You have a Bachelor of Arts, Honours Degree in Psychology from the University of Ottawa?

A. That's correct.

Q. And you have a Master's Degree in Social Work from the University of Ottawa?

A. That's correct, yes.

Q. And today, you are the owner and operator of Kanata Counselling Services, which you founded in 2003?

A. Yes.

Q. And you have been a therapist for individuals and couples while working for a major employee assistance program provider here in the City of Ottawa?

A. Yes.

Q. And prior to that, you were a social worker in several places, one of which would be the Ottawa Hospital, in assisting individuals and families during times of crisis?

A. Yes.

Q. And another was the Centre Medical Ste-Anne?

A. That's correct, yes.

Q. And you have also had experience working on site with either government departments or businesses to assist - to assist with work place tragedy, conflict mediation and management of stress and change?

A. Yes.

Q. And you are a registered member of the Ontario College of Social Workers and Social Service Workers?

A. Yes.

Q. And you are a member of the Ontario Association of Social Workers, the Canadian Association of Social Workers and the National Capital Region Employee Assistance Association?

A. Yes.

Q. Okay. And Ms. MacCharles in the year 2013, how many appointments did Professor St. Lewis have with you?

A. We had 22 appointments.

Q. Okay. And when you met Professor St. Lewis in 2013, what were your observations of the physical and emotional impact on Professor St. Lewis caused by Mr. Rancourt's publications and the way he conducted his defence in this libel action?

A. When I met Ms. St. Lewis in March 2013, she was already on medical leave and in April, she request - she was going

to request longer medical leave because *monsieur* Rancourt was defaming her almost on a daily basis and it was having such an impact on her well-being. I observed when we met, in terms of her being physically tired, stressed, emotionally drained, because
5 *monsieur* Rancourt was attacking her credibility.

Q. Okay, give me that again. Tired, sorry...

A. Stressed.

Q. I can't write that fast. Stressed, yes.

A. Yes. Emotionally drained.

10 Q. These are your observations?

A. These are my observations.

Q. Right.

A. And she, you know, she looked overwhelmed and was visibly upset.

15 Q. Okay. I'm sorry I interrupted you.

A. It's okay.

Q. Go ahead.

A. Also her - she reported her sleep being impacted by the defamation.

20 Q. And did she look like she was having a...

A. Yes.

Q. ...sleep impact?

A. Yes and I could - I could hear it in her tone of voice, just the - and the sighs and just - and just the pure
25 exhaustion in her face, I could really see it.

Q. By the way, are you referencing this first time when she came in to see you on March 2013 or is this sort of...

A. This was...

Q. ...over the period?

30 A. ...over the period throughout the, the appointments.

Q. Okay.

5 A. Also, I could also hear, you know, based on her, you know, being stressed and anxious, I could hear the agitation in her voice during her appointments. There was also an incident where she felt extremely stressed and she was feeling overwhelmed when we were talking and she was referencing an incident that had happened where she actually threw up from being so upset and that's when she had found out that a lawyer, linked to *monsieur* Rancourt, was saying that online, that she contributed to *monsieur* Rancourt's firing and that was very upsetting to her and as she talked about it, I could see, I could see how upset she was physically. She also - we also, you know, during our sessions what came out was the, the impact on the quality of her work life. So, Ms. St. Lewis, in April 2013, when we were having a session, she was already worried and anxious about the beginning of September and the school year. So, many months before, she was already thinking about how was she going to be able to focus, especially, you know, having to face first year students who don't know her. How were they going to view her? Will they respect her and...

20 Q. And what was - what were you observing when she was recounting that worry of facing first year students that didn't know her? What were you observing?

25 A. So, what I was observing is that in regards to just how she was in front of me, like, just being more agitated. She was recounting in terms of the, the worry, and that was something that was on her mind. And again, that was also linked to the, you know, the sleep being impacted. And she spoke that, of *monsieur* Rancourt really taking, taking away her joy of teaching.

30 Q. And when Professor St. Lewis was telling you that, what did you observe her state was?

A. Visibly upset, frustrated. Just really

disappointed, too.

Q. Okay.

A. And also, what came through our sessions was that she felt there was a risk to her personal safety and she spoke about the time that she was confronted in her office by someone who mentioned *monsieur* Rancourt. There was a student present and that witnessed it and it took some time for this individual to leave and as she was recounting that, she was visibly, you know, upset. I could hear it in her tone of voice, also.

Q. Okay. Anything else?

A. No.

Q. Okay.

MR. DEARDEN: That completes this witness' testimony, Your Honour.

THE COURT: All right. You're free to go then.

A. Thank you.

MR. DEARDEN: Thank you, Ms. MacCharles.

A. Thank you.

MR. DEARDEN: Your Honour, the next witness will be President Allan Rock who I will go get outside the courtroom.

THE COURT: Good morning.

ALLAN ROCK: SWORN

MR. DEARDEN: So, Your Honour, we prepared a Book of Exhibits for President Rock that I would like to distribute and have entered as the next exhibit, please.

CLERK REGISTRAR: It will be Exhibit Number 20?

THE COURT: Exhibit 20.

EXHIBIT NUMBER 20: Book of Exhibits of Allan Rock -

produced and marked.

A. Thank you.

MR. DEARDEN: May I proceed, Your Honour?

THE COURT: Yes.

5

EXAMINATION IN-CHIEF BY MR. DEARDEN:

Q. Good morning, President Rock.

A. Good morning.

10 Q. Sir, you've been the President and Vice-Chancellor of the University of Ottawa since 2008?

A. Yes, I have.

Q. And you're a graduate of University of Ottawa's Law School?

A. Yes.

15 Q. And you obtained your Bachelor of Arts from the University of Ottawa?

A. Yes, I did.

Q. And you went to the University of Ottawa High School?

20 A. Yes.

Q. Did you ever dream that when you did the trifecta of Universities of Ottawa schools that you would one day be the president of that university?

25 A. I would have described myself as a very unlikely candidate actually, at the time.

Q. Prior to entering politics, you practised law for 20 years as a trial lawyer?

A. Yes.

30 Q. And you also became the head of the Law Society of Upper Canada as treasurer of the governing body that looks after the 40,000 plus...

A. Yes, I did.

Q. ...lawyers in the province?

A. Yes.

Q. And then you decided to leave the profession and take up a new profession and that was to become a member of Parliament for the Liberal Party of Canada and that was 1993?

A. Yes, that's right.

Q. And you held three cabinet portfolios, Minister of Justice, Minister of Health and Industry Minister?

A. That's correct.

Q. And then in 2003, you were appointed Canada's Ambassador to the United Nations in New York?

A. Yes, I was.

Q. And just briefly, what did that ambassadorship entail?

A. Representing Canada's interests in the United Nations Headquarters, speaking and voting on its behalf in the General Assembly, speaking on its behalf in the Security Council and generally being involved in matters that touched upon Canada's interests in the world, whether it was in peace and war, global public health, issues of that kind.

Q. And you led a successful effort by Canada to secure the adoption by the United Nation member states of the responsibility to protect populations from genocide, ethnic cleansing, war crimes, and crimes against humanity?

A. Yes.

Q. Now, in your current role as President and Vice-Chancellor of the University of Ottawa, what are your duties?

A. The - I'm sort of Chief Executive Officer of the institution, so I'm responsible for the administration of the university. I report to the Board of Governors. I put in place an executive team of vice-presidents responsible for, whether it's academic affairs, financial management, research or governance and

we work together, responding to the Board, to advance the university's strategic plan, focusing on quality of student experience, deepening our research mission, strengthening our bilingualism and our commitment to *la Francophonie* and also making the university more connected internationally with universities
5 around the world.

Q. And one of those vice-presidents was Robert Major?

A. Robert Major was the Vice-President Academic Provost of the university, responsible for academic matters and standards.
10

Q. And he'll be testifying next. So, you're - I have a short biography of you in this Exhibit Number 20, Mr. Rock, at Tab 1, and I'd ask you to turn to Tab 2.

A. I have it.
15

Q. So, on November 3rd, 2008, here at Tab 2, you receive an email, as do a number of other people, from Mireille Gervais, that sent you the Student Appeal Centre 2008 Annual Report and asked you to reply to that by November 11, 2008?

A. Yes, I received that.
20

Q. What was your response to this email from Ms. Gervais?

A. I responded to Ms. Gervais by email, dated November 7th, which is found under Tab 3 of this book. Essentially, I asked two things, apart from acknowledging her message to me. I asked, first of all, that she provide us with the data on which her conclusions were based and I also asked that the deadline for, for responding be extended until December 1st to give us more time to examine her report and the underlying data.
25

Q. And what was her response?
30

A. Her response came five days later. Under Tab 4, you will see a copy of her responding email, which enclosed, or at

least, I think it told me that she, she was not going to give us more time. She was going to go ahead with the publication of the report and nor did she respond to my request for the underlying data. And if I may, at Tab 5, you will see that there's a copy of the news release that was put out by *madame* Gervais at that time. It was November 12th and it - the news release accompanied the publication of the, the report of which we're speaking.

Q. Okay. So, the same day that she wrote you what is at Tab 4, November 12th, 2008 email where she says in the middle of that email that it wouldn't be appropriate to release her report during the exam period, the - they issued, the SAC issues this media advisory that same day, which is at Tab 5?

A. Yes, that's correct.

Q. And so, what did the university decide to do about this now publicly released Student Appeal Centre Annual Report that's titled, "Mistreatment of Students, Unfair Practices and Systemic Racism"?

A. You can see from the very title of the news release that these were very sensational and very serious allegations about the university and so I was extremely concerned about them. The reason I asked Mireille Gervais to give me the underlying data and a little more time to respond is that I wanted someone to go through her report, its methodology, the information that she relied upon, and tell me whether it was credible, tell me whether it was a, a serious report or whether it was simply sensationalistic and superficial. So, I was very concerned about the fact that anyone, especially a, a Student Appeal Centre, which is part of our student federation, was putting out a news release and publishing a report alleging systemic racism and the mistreatment of students at the university. It's terrible for our student body who might lose confidence in the process and not avail themselves of it. It's terrible for the university to have

people in the community think that we're that kind of an institution. So, I was very worried that this allegation was being made public and we hadn't yet put ourselves in a position to respond to it.

5 Q. So, what did you - what steps did you decide to take to respond?

A. In discussion with Robert Major, the Vice-President Academic, we came to the conclusion that the most responsible and effective way of acting was to give this report, from Mireille Gervais, to somebody who was knowledgeable enough to analyze it, to tell us whether it was put together credibly, whether the methodology was sound, whether there was sufficient data on which to draw these very serious conclusions, and so we wanted to turn to somebody with that kind of expertise to analyse the report for us and just tell us whether it was a credible, serious report. And we talked about who it is that - who, who might do that for us, perform that function for the university. We mentioned a couple of candidates on campus and we eventually settled on Joanne St. Lewis as the person we would ask.

20 Q. And why did you decide to ask Professor St. Lewis to evaluate the 2008 SAC Annual Report?

A. What we were after was credibility. We wanted to put the report in, in the hands of someone who was pretty well universally recognized as a credible figure who understood issues of, not only academic methodology, but also issues involving allegations of racism, to have a serious minded examination of the report that we got from Mireille Gervais. Joanne St. Lewis was, to us, a very attractive candidate for that role. She was the Director of our Human Rights Office at the Common Law Section of our law faculty. She had spent her career working for human rights and battling racism. She had written scholarly papers on the subject. She had attracted favourable attention

internationally for her prominence in the field. So, here was somebody whose credentials we thought were impeccable, who understood the rigours of academic methodology but also understood the dynamics of racism. We also knew Joanne as someone who had a reputation for independence so that if we gave her this task and asked her to take it on, we would get a response from her that was all the more valuable because she was known as her own person. If, if, if there was a problem here, she would tell us. She wouldn't sugar coat it. So, Robert and I agreed that she was the most appropriate person for the job and we asked her to take it on.

Q. And what did the colour of Professor St. Lewis' skin have to do with her qualifications to do the evaluation you wanted done?

A. Nothing.

Q. And to your knowledge, President Rock, were any conditions or restrictions put on Professor St. Lewis about the content of her evaluation report?

A. To my knowledge, there were no such conditions or restrictions. And in my judgment, she wouldn't have accepted it if there were.

Q. So, Tab 6 is an email where Professor St. Lewis, on November 16, 2008 says, "Please find attached..." - this is an email to Robert Major, Henry Wong, and cc'd to you, Mr. Rock - "Please find attached my draft evaluation of the SAC report. I am happy to respond to any suggestions that you may have." First of all, to your - what was your understanding as to who had the final say on what the contents of Professor's - Professor St. Lewis evaluation report would be?

A. The final say with respect to the contents of the report would be Joanne St. Lewis'. It was her task. We'd asked her to take it on and she would decide what the report said and

how it said it.

Q. And did you personally, President Rock, have any discussions with Professor St. Lewis about the draft report that she's sending you at Tab 6?

A. I did not.

Q. Now, what did you do when you received a copy of the draft evaluation report?

A. I read it and then I spoke with Robert Major about it and I sent Robert and the other vice-presidents an email message about it a little later, a little later - the next day, November 17th, and that's found at Tab 7, if I may?

Q. Okay. And to your knowledge, this - let's just deal with this email, the November 17, 11:25 a.m. I do not see Professor St. Lewis in the to or the cc's lines but to your knowledge, was what you conveyed to your internal people shared with Professor St. Lewis in that email, that....

A. No, this email was just to my own team, to the vice-presidents and to two other members of staff. I was not writing to Joanne St. Lewis intentionally. In fact, in this message, I made the point that Robert Major should be the only point of contact with Joanne St. Lewis. I didn't want her to be receiving messages and suggestions and comments from a number of people. It was important, in my mind, that we maintain her independence and her objectivity and so I asked my colleagues to let Robert be the only point of contact with Joanne.

Q. And to your knowledge, is that what happened?

A. Yes, sir.

Q. Now, still on that Tab 7, your first paragraph of that November 17th, 2008 email says, "I think the report is very well done. My only concern is with the first recommendation, the wording of which seems to assume that there is some racism present already. Since Professor St. Lewis has already concluded that

there is no evidence of it, such wording is wrong and inconsistent with her own report." Did you personally ever convey your interpretation of her first recommendation to Professor St. Lewis?

A. No.

Q. And prior to Professor St. Lewis submitting her final report, which was a few day - I think it was the next day - we'll come to it but prior to that, President Rock, did you have - ever have any communications with Professor St. Lewis about her 10 recommendations?

A. No.

Q. And you touched on your third paragraph of this email at Tab 7, the one last point. Why are you informing your administration committee to maintain Professor St. Lewis' independence?

A. The strength and the value of this report for me, for the university, was entirely related to its independence. In other words, I wanted us to be able to demonstrate that this was Professor St. Lewis' report, that we didn't direct her in the work, that we didn't tell her what to say. And so, while she'd sent us a draft of the report, I wanted to make the point that Robert Major should be the person who deals with her and that - and I think I say here in the memorandum - in the third paragraph of this document at Tab 7, in the third line, "So far, our dealings with her have been through Robert and have been scrupulously objective. We have simply sought her view and have imposed no limitations, constraints or conditions. She's been entirely free to say anything she wants. In order to maintain this professional and objective relationship with her, I want Robert to be the only one in communication with her. Robert can simply observe that the first recommendation seems inconsistent with her findings. It will then be up to Professor St. Lewis to decide whether to make a change. If a number of people all sent

emails and call, we will lose that focus of professionalism and independence." That's the end of my quote and when I - so that, that sums up what was in my mind then and what's in my mind now. I didn't want a number of us to communicate with her for fear that we might give the impression we were trying to influence her findings.

Q. And is what you've recorded in this email on November 17, 2008 at 11:25 a.m., what, in fact, happened?

A. Yes. Robert dealt with Joanne and was the only one to do so.

Q. And at any time was, to your knowledge, was Professor St. Lewis privy to the administration committee's discussions about her report?

A. Not to my knowledge.

MR. DEARDEN: Now, Mr. Registrar, could you provide President Rock Exhibit 3, which is the first article in issue in this libel action? Please.

A. Thank you.

Q. President Rock, I turn your attention to the seven - the number seven paragraph.

A. Yes.

Q. And Mr. Rancourt has written, ironically, "The original SAC report was about racial discrimination regarding academic fraud appeals such as when an academic misrepresents his or her work as independent when it verifiably and factually - when it is verifiably and factually not independent by any stretch." What do you, based on what you observed and experienced and did back in November 2008, what do you have to say about this statement in paragraph seven?

A. Well, I, I take it to be an assertion that Professor St. Lewis' report was not independent, that the work was not her own and I disagree, based upon the events that I lived,

that I participated in. Every effort was made to ensure that Joanne St. Lewis was given this task and then given the freedom to go about and do it and report in her own way, in her own words and let the chips fall where they may. That's what we wanted and that's what we got. So, I disagree with any suggestion that hers, hers was not an independent report. I believe that it was independent.

Q. And going back to your Book of Exhibits, at Tab 8, November the 18, 2008 at 4:36 p.m., Professor St. Lewis forwards her final report of an evaluation of the Student Appeal Centre's annual report. And says, "I look forward to your comments." At any time, President Rock, did you make any comments to Professor St. Lewis about her final report?

A. I'm not certain. It could be that in the period since then, when we've seen each other at social events or otherwise on campus, I may have thanked her for the report but certainly, said nothing that changed the contents or influenced the contents at all.

Q. And at what point in time did Professor St. Lewis' mandate to evaluate the Student Appeal Centre report end?

A. Well, in, in my mind, it ended with the delivery of her report on November 18th, 2008.

Q. This Tab 8?

A. Yes, that's right.

Q. And you briefly alluded to it when - during your testimony, President Rock, on why you selected Professor St. Lewis to evaluate this report but what concerns did you have about the impact of the Student Appeal Centre's Annual Report on the student body?

A. Mm-hmm. The student at the University of Ottawa has the right to appeal any academic disposition, a mark, or, or a finding of academic fraud or plagiarism and it's crucial that

students have confidence in that process. They have to feel they're gonna - they are gonna get a fair shake. They're gonna be listened to and their case will be judged objectively. That's part of the bargain we make with students. The report that was published November 12th by the Student Appeal Centre and Mireille Gervais, really went to the heart of that process and any student reading that news release or that report would be likely to think that they're not gonna get a fair shake, that the system is rigged, that if they are a visible minority; if they're a person of colour, if, if they're from Asia, the, the deck is stacked against them and that is appalling and it's appalling for the student; it's appalling for the university, for our reputation, and so I was gravely concerned that that impression might be left by this SAC report and that's why, when we got the report from Professor St. Lewis, I was anxious and you'll see it in the following messages, I was anxious to see that it got as much attention as the original charges did, because sometimes in life, the response doesn't get as much prominence as the, as the accusation. So, I, I was encouraging my team to make sure that Professor St. Lewis' report was brought to the public's attention and to the attention of our students.

Q. And so, what did the university do to attempt to get the same media exposure as what Ms. Gervais had received when she released her report entitled, "Mistreatment of Students, Unfair Practices and Systemic Racism"?

A. Well, you'll see at Tab 9, there's a copy of my email, Sunday, November 16th...

Q. Sixteen, yeah.

A. ...to Andree Dumulon, who was our Communications Officer, as well as two other employees asking or suggesting that CBC Radio be invited to have Joanne St. Lewis on their morning program because Mireille Gervais had been on that program too, so

here, I'm acting as my own media consultant and suggesting that we encourage CBC radio to have Joanne St. Lewis on, just as they'd had Mireille Gervais on. But...

Q. Okay.

5 A. ...I think it goes beyond that too. My - yes, if, if, if I may? At Tab 10, Mr. Dearden, there's also a copy of a number of email messages including my message to Robert and the other VPs and Andree Dumulon on Tuesday, November 18th and here again, I'm expressing my own thoughts about the communication
10 strategy but I suggest Professor St. Lewis would be an ideal spokesperson, if she's willing, and I'm quoting here now from the message under Tab 10, three quarters of the way down the page, part of my email of November 18th. In the first bullet point, I say, "She'd be an ideal spokesperson, if she's willing." I go on
15 to say, "Perhaps we can email copies of the report to professors, members of the board and the Senate." In other words, I'm encouraging wide dissemination of this response because I want to get at the impression that may have been left on November 12th when the Student Appeal Centre alleged racism, systemic racism and
20 unfairness in the appeals process.

Q. And this email of November 18, 2008, that is on the first page of Tab 10, to your knowledge, was Professor St. Lewis aware of what you were saying in this email?

25 A. No. This is just to my own team. And in fact, Robert was still the person who was communicating with Professor St. Lewis so it's addressed to him but it's for the attention of the other VPs and also the communications people as well.

Q. Okay.

A. If I may?

30 Q. Yes.

A. On the second page of Tab 10, in fact, I expressed what was in my mind in saying, "There may be many other

steps we should take to undo such damage as may have been done by the publication of the Gervais document. I invite Andree..." - that's Andree Dumulon, the communications person - "...to make additional suggestions as well as to propose who should take charge of follow up. Robert, thank you," and so on.

Q. And what is Tab 11?

A. Tab 11 is an email message that I sent on Sunday, November 23rd of 2008 to Andree Dumulon with copies to two other members of the university's personnel. Andree is the communications director and by this time, the Communications Department, responding to my encouragement to widely disseminate the report, had prepared an executive summary so that it was a - intended to be a cogent brief, sort of resume of, of what was in her report. And I'm here commenting on the executive summary. I've seen a draft of it by this time and I'm saying it's too long and not crystal clear. The press - we might be better off just to put out the report itself in a press release with the key messages very simply stated. My concern was to get the message out there in a way that people can readily grasp it. And I give some examples. I say, for example, she's a recognized expert in human rights, racism policy and frequently advises - frequently advises outside clients. What she concluded about the Gervais report, that Professor St. Lewis refuted the, the Gervais report, which claimed that there was unfair treatment of students and so on. So, I guess I'm just exhorting my team to find effective ways to simply communicate the substance of Joanne St. Lewis' report because that was gonna help us correct the misimpression left on November 12th.

Q. And in your last paragraph, you say, "It seems to me we have an important message here and it must emerge plainly if we are to regain public's and student confidence in a process that Gervais attacked, according to our expert, unfairly and

unreasonably."

A. Yes.

Q. And you were wanting to regain public and student confidence in a process - in the academic fraud process for what reason?

A. Well, because it's important that students feel that the processes that affect their academic life are fair and it's important that the public understand that it's a university that operates on correct principles. I don't, you know, to have people in the city think that or, or anywhere for that matter, that the University of Ottawa is rife with systemic racism is devastating and we had to correct that impression.

Q. And to your knowledge, President Rock, was Professor St. Lewis aware of this document that we see at Tab 11?

A. No. I mean, I had - I didn't send it to her nor was she involved and this is our own internal communication effort to take her report, distil it and send out the key elements in it simply and effectively for students and the public.

Q. And Tab 12, November 24, 2008 press release from the university?

A. Yes.

Q. And - so that's when the university publicly released Professor St. Lewis' evaluation?

A. That's correct.

Q. Now, I'm gonna take you back, President Rock, to Exhibit Number 3, which is Mr. Rancourt's article, "Did Professor Joanne St. Lewis Act as Allan Rock's House Negro?" Do you have that, sir?

A. I have.

Q. And the fourth numbered paragraph in this article says, "The Student Appeal Centre of the Student Union at the University of Ottawa today released documents obtained by an

access to information request that suggests that law Professor Joanne St. Lewis acted like President Allan Rock's house Negro when she enthusiastically toiled to discredit a 2008 SAC report about systemic racial discrimination at the university." And putting it point blank, President Rock, did Professor St. Lewis act as your house Negro when she prepared her evaluation of the SAC's annual report?

A. No. And in order to make that answer meaningful, I think I have to say that, I take it from the use of the term, that it's intended to describe someone who is servile, who takes direction, who was under the control of someone else. First of all, that's a racist epithet, which makes one heartsick even to hear those words together but if it's intended to convey that meaning, then it is plain wrong because we did everything we could in order to ensure that Professor St. Lewis was an independent actor who was to do her own work, make up her own mind, arrive at her own conclusions and write her own report, which is what she did.

Q. And based on your interactions with Professor St. Lewis and your knowledge of what happened in November of 2008, did she enthusiastically toil to discredit the 2008 annual report?

A. My impression of the work that she did and the way she did it is consistent with my image and understanding of her as a person and a professional. She undertook the job seriously. She addressed the questions carefully and she prepared a thoughtful report and did so very professionally.

Q. And still on Exhibit Number 3, this article that is the subject of this libel action, the sixth sting says, "The ATI records expose a high level cover-up orchestrated by Allan Rock himself to hide the fact that the St. Lewis efforts were anything but independent, as she characterizes her report on the first page." And if you also turn up Tab 13 of the - your Book of

Exhibits, President Rock, second page, you'll see in the middle of the page, the second bullet, "Personally managed a cover-up of his administration's 2008 campaign to discredit a Student Union report about systemic racism revealed February 2011. Access to information records show a cover-up directly orchestrated by Allan Rock himself to hide the fact that Professor Joanne St. Lewis' evaluation was anything but independent as characterized by the administration." So, what do you have to say about Mr. Rancourt's two articles stating that you orchestrated a high level cover-up, President Rock?

A. Well, first of all, I, I, I say that the documents that we've just gone through, the, the documents that record what was happening at the time inside the university demonstrate that it was anything but a cover-up. It was an honest effort to engage the work of an expert, credible person to look honestly at the SAC report and give us a frank assessment whether it was credible but I'll say something else, if I may, in response to your question, Mr. Dearden. Far from covering up, we wanted to go beyond *madame* Gervais' report and find out for ourselves whether there was anything to the allegation of racism or unfairness in the process. And so, we, we entered into a second arrangement with *madame* - with Professor St. Lewis, asking her to take on a new task, which is to look into the Student Appeal system and conduct her own study. Here, we were going to get a real study of, of whether - we wanted her to look at the very data that Mireille Gervais claimed to have and, and do her own assessment of what it meant and whether we had a, a problem with fairness or with racism and that mandate was given to her early in 2009. So, we weren't interested in covering up. We were - we were interested in developing a better understanding whether or not there was a problem, and if so, what do to about it.

Q. And is that second mandate that you gave to

Professor St. Lewis what we see at Tab 14? There should be a letter dated March 16, 2009...

A. Yes, I have it here.

Q. ...cc'd to you?

5 A. That is correct. That's the letter of March 16th, 2009 from Robert Major, the Vice President Academic to Professor St. Lewis.

Q. And what was - we may as well put on the record, President Rock, what the mandate was?

10 A. Well, as Robert said, Professor St. Lewis had agreed to assist us in evaluating the academic fraud process. "To conduct an independent assessment...", and I'm reading here from the second paragraph of his letter, "...to determine whether systemic racism plays any part in this process and to address any issues that may be identified. As you suggested, the cooperation
15 of the Student Appeals Committee is essential for the success of this analysis." So, in responding to the suggestion that there was a cover-up, I say, here is a retainer from the university administration to Joanne St. Lewis asking her to look into the
20 issue herself and tell us whether racism plays any part in the process. That's the second mandate.

Q. And what is your understanding, President Rock, of Professor St. Lewis' standing in the University of Ottawa community?

25 A. Joanne St. Lewis, to my personal knowledge, has always enjoyed the highest respect and the highest standing in the university community. I, I've known Joanne St. Lewis for some years before, commencing before I became president of the university in 2008 and we travel in some of the same circles,
30 lawyers and governors of the Law Society and, of course, professors and students on campus and I can tell you that she's held in the highest regard by people from all of those different

parts of society. She's an excellent professor, who her students really enjoy. She's a respected scholar who's produced work that's been recognized, not only in Canada, but internationally for its value in understanding legal elements of racism and responses to racism. She was, on three occasions, elected by her peers, members of the law profession, as a bencher or governor of the Law Society. Those are province-wide elections. And there are only 20 representatives chosen from outside of Toronto and she was one of them on three occasions. I, I could go on, but I, I wanna convey my understanding of, of her standing in the community as being very high, based on sincere respect, and, and seen as someone of achievement, someone of value, who's very successful professionally.

Q. Now, Professor St. Lewis met you, President Rock, on April 15, 2011, along with the then Dean of the Law Faculty, Bruce Feldthusen, about Mr. Rancourt's article, which is Exhibit 3, "Did Professor St. Lewis Act as Allan Rock's House Negro". So, during that meeting that you had, what were your observations of the physical and emotional impact on Professor St. Lewis that that article had caused?

A. It was apparent to me that when I met Joanne St. Lewis in my office on that day, she was in deep distress. She'd been emotionally devastated by the words used to describe her, the words used in the Rancourt blog to describe her. And as we talked about how she felt and what she was going to do, it became clear to me that the impact on her was two-fold. First of all, for her, as a person, to be described in such a, a racist way was enormously hurtful. She was clearly emotionally in pain. In fact, you know, she's known for an ebullience, an enthusiasm, a, a chippiness (ph) that, I mean, a cheerfulness that is characteristic of her but that was not in evidence on that day. She was clearly crushed by what had happened. It emerged as we

talked about it, the second reason that she was so upset is that her, her reputation as a professional, her standing and we were talking about earlier as a, an independent thinker who, who was her own person was being called into question. It was implicit in the blog's statement that she was a person who was for hire, that we, we could hire her and tell her what to say and she would say it and that was so completely against the grain for Joanne St. Lewis. She found that very upsetting, as well, so I saw a person who was very much in pain, who was very, very worried about her professional standing and the impact that this might have on it. And it was also almost disoriented by the stunning attack, stunning racist attack that had been made upon her.

Q. And you, as president of the university, agreed that Professor St. Lewis' legal costs, in suing Mr. Rancourt for publishing this Exhibit Number 3, which she claims defames her, you agreed to that at that April 15th meeting, and why did you agree to that?

A. I felt that there was at least a moral obligation for us to stand by her. She, after all, was doing work on, on behalf of the university. We asked her to take on this task. It was that work that gave rise to the, to the attack in the Rancourt blog. She was a member of our faculty, a long time and loyal professor at the university, and someone who had been deeply, deeply hurt by what had happened. I was also aware of the fact that costs can be a barrier to seeking redress in the civil courts and I didn't want that to stand between her and seeking judicial relief. So, in, in fact, we felt we had a moral obligation.

Q. And did you convey that reasoning to Mr. Rancourt?

A. Not personally, but I instructed the university's lawyer to do so and I think that document is under your Tab 16, Mr. Dearden.

Q. Fifteen.

A. Fifteen. At some point in late 2011, Mr. Rancourt was asking whether, in fact, we had agreed to assist Professor St. Lewis with the cost of litigation and David Scott, the lawyer for the university, wrote that letter in response and if I can just draw your attention to the third paragraph, David Scott said on my instructions that, "The university is reimbursing Professor St. Lewis for her legal fees incurred in her defamation proceeding in the courts against you. Your defamatory remarks about Professor St. Lewis were occasioned by work, which she undertook at the request of the university and in the course of her duties and responsibilities as an employer [sic]. Her efforts were not personal, but in the interests of the university. Furthermore, your outrageously racist attack upon her takes this case out of the ordinary and, in the view of the university, alone, creates a moral obligation to provide support for her in defence of her reputation." So, those words really expressed my feelings. I'm prepared to adopt them. That's the answer we gave to professor to, to Mr. Rancourt and I believe that that answer to be true.

Q. President Rock, thank you very much for being here today.

A. Thank you, Mr. Dearden.

THE COURT: Thank you, sir, you may go.

A. Thank you, Your Honour.

MR. DEARDEN: Your Honour, I'll go - do you want me to go get Robert Major or do you want to break now?

THE COURT: We'll take a 15-minute break at this time.

...JURY EXITS

(11:16 a.m.)

R E C E S S

U P O N R E S U M I N G :

THE COURT: Bring the jury.

MR. DEARDEN: Wait, Your Honour. Just before, just one minor matter. Well, actually, it isn't minor. It's pretty serious. During Mr. Rock's testimony, I was hearing audible reactions, they weren't positive, coming from that side. I don't know who was reacting, like, you know, like a guffaw or a heavy sigh or whatever, and I'm asking that Your Honour tell Mr. Rancourt's supporters that they're not supposed to be reacting to testimony of a witness. It's prejudicial. So, I would appreciate Your Honour to indicate that to the - well, anybody in the audience shouldn't be doing that.

THE COURT: No, nobody should whether, whoever they are, but I, obviously, I did not - I thought I had heard something at one point. I didn't really hear it, but obviously, I am instructing people to remain totally passive. I mean, it's - we cannot do this to try to influence the jury in any way. They'll decide this on the evidence and not on anybody's feeling about the evidence. All right, bring the jury.

MR. DEARDEN: Thank you, Your Honour. And Your Honour, Robert Major will be testifying in French.

THE COURT: All right.

INTERPRETER: Mr. Dearden, can you hear me? Mr. Dearden. Can you hear me? Can you hear me, Mr. Dearden? Good.

CLERK REGISTRAR: All rise.

...JURY ENTERS

(11:42 a.m.)

CLERK REGISTRAR: All members of the jury are present, Your Honour. You may be seated.

THE COURT: All right. Let's proceed.

MR. DEARDEN: Your Honour, could I call my next witness, which will be Robert Major to be sworn in, please?

5

ROBERT MAJOR: SWORN (Through Interpreter)

MR. DEARDEN: Your Honour, we have a Book of Exhibits for Mr. Major.

10

THE COURT: Are you going to put - I assume what you want to - you'll be putting a question in English if Mr. Major does not need for the question to be translated?

MR. DEARDEN: Correct.

A. No.

15

THE COURT: But he will answer in French?

MR. DEARDEN: Yes.

THE COURT: All right. So, it's just so that we understand that we don't need an interpretation of it, of your question for the purpose of the witness. Thank you.

20

MR. DEARDEN: Thank you, Your Honour. So, Your Honour, could I enter as Exhibit 21 a Book of Exhibits of Robert Major?

THE COURT: Yes. Thank you.

25

EXHIBIT NUMBER 21: Book of Exhibits of Robert Major - produced and marked.

EXAMINATION IN-CHIEF BY MR. DEARDEN:

30

Q. Good morning, Mr. Major.

R. Bonjour.

INTERPRETER: Good morning.

Q. I have your curriculum vitae at Tab 1 and I'm

just gonna quickly take you through highlights from it. You have a Bachelor Arts Degree from University of Ottawa?

R. Oui.

INTERPRETER: Yes.

Q. And you have a *license* S. Lit (ph) from the University of Ottawa?

R. Oui.

INTERPRETER: Yes.

Q. And you also have a Ph.D. from the University of Ottawa?

R. Oui.

INTERPRETER: Yes.

Q. And the Ph.D. is in what?

R. En littérature française.

INTERPRETER: French Literature.

Q. And from 1967 to 2009, you taught at the University of Ottawa's Department of French Literature?

R. D'abord, au département de linguistique et langues modernes et ensuite, au département de lettres françaises, oui.

INTERPRETER: Well, first of all, Linguistics And Modern Languages, then for French Literature, yes.

Q. Okay. And from 1989 to 1995, you were the Chair of the Department of *lettres français*?

R. Oui.

INTERPRETER: Yes.

Q. And you were, from 1996 to 2001, the Associate Dean of Research of Faculty of Arts?

R. Oui.

INTERPRETER: Yes.

Q. And you were recognized as Professor of the Year for the Faculty of Arts in 1996?

R. Oui.

INTERPRETER: Yes.

Q. And then in 2001 through to 2009, you were Vice-President and Academic Provost at the University of Ottawa?

R. Oui.

INTERPRETER: Yes.

Q. Now, what does Vice-President Academic do?

R. Le vice-recteur aux études, c'est le titre en français est à toutes fins utiles, le vice-président exécutif de l'université. Le recteur étant le chef titulaire et ayant un large, un large éventail de responsabilités, y compris de représenter l'université dans toutes sortes de lieux. Alors, pour le train-train quotidien, c'est le vice-recteur aux études, qui est le, le vice-président exécutif. De façon plus précise, il est responsable pour toute la vie scolaire de l'institution, c'est-à-dire les programmes d'étude, l'embauche des professeurs, le bien-être des étudiants. Il est le patron immédiat de tous les doyens des facultés et également, de différents services qui, qui sont, pour la plupart, dirigés par un vice-recteur associé aux études, par exemple, le service du registraire qui s'occupe des admissions, etcétera, le bureau international; le SAS, qui est le service d'appui au succès scolaire. En fin, y'a pas mal de monde qui, qui relève du, du vice-recteur aux études.

INTERPRETER: In French, *Vice-Directeur aux études*, Vice-President Academic, the - so, for all intents and purposes, VP at the university for administration. There is quite a large scope of responsibilities involved in - also including to represent the university in all sorts of areas. So, for the daily routine, it's the VP executive, if you want, it's the same as VP for academic. He is responsible for all of the scholarly activities, that is study programs, hiring professors, the well-being of students. He is the immediate boss of all the deans in

all faculties and also, for different services that, for the most part that are - who was - would be directed by a vice-rector for academic, for example, registration services, registrar's services, looking after students registering, also the office for international and also SAS, which is support services for students. So, a lot of people do report to my position.

Q. And your area of specialization as a professor, as I understand it, Mr. Major, was 19th and 20th century Quebec literature?

R. Oui. La littérature québécoise et canadienne-française des 19^e et 20^e siècles et aussi un, un intérêt marqué pour tout ce qui touche aux idéologies. C'est-à-dire les rapports entre la société et la littérature.

INTERPRETER: Yes. Quebec literature and French Canadian for 19th and 20th centuries and also anything for ideologies I'm very interested in. That is a report - the relation between society and literature.

Q. And you authored four books?

R. Authored, oui, auteur de quatre, quatre ou cinq là, six, mais enfin, auteur, oui, de, de monographies et aussi de recueils collectifs, oui.

INTERPRETER: Yes. Author of four, four or five or six. Well, in any case, yes, authored monographies and also collective works.

Q. So, four books, two collective editions...

R. Oui.

Q. ...and over 80 articles, you have written?

R. Oui.

INTERPRETER: Yes.

Q. And prizes and awards, I'm just gonna list some of them. You were short-listed for the following literary prizes, the Governor General's Award twice?

R. Oui.
INTERPRETER: Yes.
Q. The Grand Prix *Littéraire de la Ville du*
Montréal?
5 R. Oui.
INTERPRETER: Yes.
Q. Debansky (ph) Prize of the Canadian Federation
for Human and Social Sciences?
R. Oui.
10 INTERPRETER: Yes.
Q. The France Quebec Prize?
R. Celui-là, c'était pour la liste courte. Je l'ai
remporté, oui.
INTERPRETER: That one was not short-listed. I did
15 win that.
Q. Sorry. I didn't mean to do that one. You won
that. Okay.
R. Oui.
INTERPRETER: Yes.
20 Q. Forget the short list. Let's just go to the
prizes. France Quebec prize. There was a Henry Desjardins prize?
R. Oui.
INTERPRETER: Yes.
Q. Gabriel Law Prize?
25 R. Oui.
INTERPRETER: Yes.
Q. And Champlain Literature Prize?
R. Oui, deux fois.
INTERPRETER: Yes, twice.
30 Q. Twice? Okay.
R. Non. Enfin, oui.
INTERPRETER: No. Well, yes - okay.

Q. And you are a Fellow of the Royal Society of Canada?

R. Oui.

INTERPRETER: Yes.

5 Q. And former honorary Secretary of the Royal Society of Canada?

R. Oui.

INTERPRETER: Yes.

10 Q. And you are a *Chevalier* in the Order of the *Palmes Académiques*, France.

R. Oui.

INTERPRETER: Yes.

Q. What is that?

15 R. C'est - la, la France a l'intérêt évidemment de faire rayonner sa culture et sa littérature à l'échelle du monde. Alors, elle va donner des prix comme celui-là et les Palmes académiques reconnaît la contribution d'universitaire et d'écrivains à la culture française et donc, un jour, j'ai reçu un appel de, de, de l'Ambassade du - de la France au Canada et on m'a
20 invité aller chercher ce prix-là. C'est une, c'est une jolie boutonnière là qui - en faite, qui ressemble un peu à celui de, de la Légion d'honneur, mais c'est pas la Légion d'honneur. C'est les Palmes académiques.

25 INTERPRETER: It's - well, France, you know, it's in their interest to have their culture, literature be seen in the good light internationally. So, it will grant prizes like that one. *Palmes Académiques* does recognize the contribution from researchers in universities and people who contribute to the French literature, writers if you want. So, one day, I got a call
30 from the French Embassy in Canada. So, I was invited to go and claim that prize. It's a very nice clip or pin, if you want, which looks a lot like the Legion of Honour but it's not, you

know. It's the *Palmes Académiques*, but it's something that looks like *légion d'honneur boutonnière*, if you want.

Q. Did you get a new car?

R. Non.

INTERPRETER: No.

Q. Just kidding, sir. Okay, let's turn to Tab 2.

There should be a document with the Roman numeral 12 written at the top right hand corner and I'm looking at the email, Mr. Robert or Mr. Major, the one you sent to Allan Rock and others November 12, 2008 at 4:58. You see that?

R. Oui.

INTERPRETER: Yes.

Q. Okay. So, you're saying steps that have been taken since this morning. You gave a copy of the report - I take it that's the SAC's annual report to Henry Wong?

R. Oui.

INTERPRETER: Yes.

Q. And then you have a meeting with Professor St. Lewis, which we'll come back to and then the third thing, you're informing the president and others on the administration committee is that you were in contact with Atef Fahim to discuss the situation. Why are you in contact with Mr. Fahim about the SAC's annual report?

R. Monsieur Atef Fahim, à l'époque, était le président de la - l'Association des professeurs de l'Université d'Ottawa. Donc, c'était le président du syndicat des professeurs et quand on parle ou quand on discute de, de griefs ou de recours étudiants, *appeals*, forcément, ça concerne les professeurs parce que les professeurs sont ceux qui donnent la note et la première instance de recours, c'est le professeur. L'étudiant va voir le professeur et il l'informe, « Je ne suis pas satisfait de ma note. » Et ensuite, il y a des comités départementaux facultaires

et universitaires où les professeurs sont membres de ces comités-
là et donc, je croyais - quand on dit que l'université pratique le
racisme ou la discrimination, ça concerne les professeurs parce
qu'ils sont sur les premières lignes et donc, c'était de mon
5 devoir d'informer le président du syndicat qu'il y avait un
rapport qui avait été publié et qui attaquait l'université et
donc, les professeurs sur ce front-là.

INTERPRETER: Mr. Atef Fahim, at the time, was the
president of the Professors Association at Ottawa U. So, he was
10 the president of the union for professors. So, when we're talking
- when we're discussing of grievances or resorts, appeals for
students, forcibly, it has to deal with professors. Why? Because
professors are the ones who will give you your mark and the first
place for recourse is the prof. The students will go and see the
15 prof and say, "I'm not satisfied with my mark." Then there are
committees within departments and faculties and within the
university where the professors are members of those committees
and so, I believe when one says that university is practising
racism or discrimination, well, it deals with professors, because
20 they are at the front lines. So, it was my duty or my
responsibility to inform the union president that there was a
report that had been published, attacking the university and so
the professors on that line.

Q. Okay. And I should also just for housekeeping
25 here, Tab 2 is a one page of a four-page email. This was what Ms.
Gervais published back in 2008, was just this one page but Tab 3,
I have the complete four pages of that email in your Book of
Exhibits. Now, going back to your reporting of steps taken since
the morning of November the 12th, you had a meeting with Professor
30 St. Lewis and what was that meeting about?

R. Bien, à la réunion du comité d'administration ce
matin-là, le comité d'administration, c'est le recteur et les

vice-recteurs. Il avait été décidé de confier l'examen de cette situation ou de ce rapport à une personne compétente, celle qui dirigeait le Centre d'enseignement et de recherche sur les droits de la personne et donc, comme vice-recteur aux études, c'était ma responsabilité d'assurer des suivis et donc, dans ce courriel, j'informe mes collègues au CA, au comité d'administration, des gestes que j'ai posés. Alors, j'ai demandé à madame St. Lewis si elle pouvait venir me voir. Je lui ai confié copie du rapport qui avait été produit par madame Gervais du Centre de recours étudiant et je lui ai demandé d'étudier cette question. D'abord, d'examiner le rapport et, et de voir s'il y avait là un problème, un, un sérieux problème parce que quand on accuse une institution de racisme et systémique et de discrimination, c'est sérieux. Alors, je lui ai dit qu'on avait besoin de ses compétences comme directrice de ce centre de recherche et d'enseignement sur les droits de la personne pour examiner ça et nous donner des conseils.

INTERPRETER: Well, at the meeting of the administration committee, the Board, that would be the rector and the vice-rectors, it had been decided to ask the review of the situation, of the report, to a person who would be competent to do that. The one who was in charge of the teaching and research for human rights, so for the vice-rector to academic, it was their responsibility to ensure follow up and so, in this email, I am informing my colleagues on the Board or committee for administration of my actions taken. So, I asked Mrs. St. Lewis, could she come and see me. I gave her a copy of the report that had been produced by *madame* Gervais from the SAC and I asked her to go over and study this question. First of all, to examine the report and then to see if there was indeed a problem there, a serious problem because when an institution is accused of being guilty of systemic racism and discrimination, it is serious. So,

I told her that we needed her as a competent person, because she was director of that centre for research and teaching for human rights to go over that, study that and to give us some advice.

Q. And then Professor St. Lewis, as we know, agreed to do that evaluation and your note here says that she's leaving for Toronto and she's going to return Friday afternoon for a meeting with you and Henry, which I take it is Henry Wong?

R. Oui.

INTERPRETER: Yes.

Q. Okay. And you, did you have that meeting that you're referencing that was to occur on Friday, November 14th at 2:00 p.m.?

R. Oui. Quand madame St. Lewis est revenu de Montréal, on s'est réuni, elle, moi et Henry Wong. La raison de la présence de monsieur Wong, monsieur Wong était, à ce moment-là, il était l'ancien registraire et il était aussi l'ancien vice-recteur associé à la recherche institutionnelle. Donc, c'était notre spécialiste là des, des statistiques, des données, du - ce que les anglophones appellent *numbers cruncher*. C'était le spécialiste des, des, des données quantitatives. Alors, il était là pour donner de l'information à madame St. Lewis, si elle en avait besoin. La réunion a eu lieu le vendredi, oui.

INTERPRETER: Yes. When Mrs. St. Lewis came back from Montreal, we had a meeting, she, myself and Henry Wong. Why was Mr. Wong present? Well, Mr. Wong was, at that time, he was the former registrar. He was also the former associate vice-rector for institutional research. So, he was our expert, if you want, for stats, for data, what the English call a numbers cruncher. He was a specialist for quantitative data. So, he was there in order to give us information or to give Mrs. St. Lewis information, should she need some. It was a Friday, yes, that's when we met.

Q. Okay. And then at Tab 8, you receive a draft evaluation of the report from Professor St. Lewis and she indicates she's happy to respond to any suggestions that you may have. Can you tell us, Mr. Major, in your experience at the university, what is the practice on providing suggestions about draft reports that a university has asked one of its professors to do?

R. C'est une pratique tout à fait commune, habituelle. Par exemple, quand un professeur fait un article savant, il va demander à des collègues : « Est-ce que tu en ferais une première lecture avant que je l'envoie à la revue savant pour me donner - pour m'indiquer si j'ai oublié quelque chose ou bien si j'ai, en fin, ignorer quelque chose. » C'est la même chose dans le domaine administratif. Un comité ou une personne fait quelque chose, un rapport, et là, on circule pour voir s'il y a des éléments qui manqueraient ou qui seraient fautifs ou qui seraient incomplets, etcétera. Et donc, c'est une pratique tout à fait commune de, de, de dire : « Voici mon, mon, mon - ma première ébauche. Voici la, la première version de mon rapport et puis est-ce que y'a quelque chose que j'ai manqué ou qui, qui doit être retravaillé? » Alors, moi, ça ne m'a absolument pas étonné. Le courriel s'adresse à Henry et à moi. Henry, parce que peut-être qu'il y avait des chiffres qui étaient erronés, des, des, des statistiques et à moi, bien, parce que c'est moi qui recevait le rapport et je pense que madame St. Lewis, oui, certainement, elle savait que je suis un littéraire et je suis assez soucieux de l'écriture et du style et peut-être aussi que y'avait suggestion pour la - l'écriture comme telle, même si c'était en anglais et non pas dans ma langue première, mais je suis assez à l'aise en anglais également.

INTERPRETER: It's a practice quite common, regular, habitual, if you want. For example, when a professor will write a

knowledgeable article, he'll ask colleagues to read over before I send it to the magazine to tell me, did I miss something or, you know, would I - did I just forget something or ignore something. It's the same thing in the administrative field. A committee or a person will do something, a report, and then it's circulated to see, are there missing elements or false elements or incomplete elements. So, it's quite common a practice to say, you know, here's my first draft, here's the first version of my report and is there something that I missed or that should be worked more in depth? So, I wasn't surprised at all. The email is sent - to email to Henry and to myself. For Henry, because maybe certain stats, data were erroneous, numbers were erroneous and to me, well, I'm the one that was going to receive the report and I think Mrs. St. Lewis, well, of course, she knows that I work in literature and writing and I'm quite intent on the style and how it's written and also there was a suggestion for how it was written per se. Even if it was in English and not in the - in my first tongue, I'm also comfortable in English, as well.

Q. And who had the final say on the contents of Professor St. Lewis' report?

R. C'est madame St. Lewis elle-même. C'est la - le ou la signataire d'un rapport qui en est responsable et y'a jamais personne qui - dans le milieu universitaire qui essaierait d'imposer un contenu à un professeur et j'imagine surtout pas un professeur en droit qui sont peut-être plus soucieux que les autres de cette question-là et un peu la démonstration de ça. Je - c'est les seules choses que j'ai relevées de son rapport étaient des coquilles. Typos. Et je lui ai dit : « Voici les coquilles que j'ai vues dans votre rapport et tu en fais ce que tu veux. » Même les coquilles, je n'étais pas pour les corriger pour elle. C'était elle la signataire. C'était elle qui était responsable et qui devait défendre son rapport. Elle en était la propriétaire

totale.

INTERPRETER: It's Mrs. St. Lewis herself. She - it's the person who signs the report who has its responsibility. There are - never is there anyone in the university milieu who would try to force the content onto a professor and I imagine especially not a professor in law who are maybe more detail oriented than others on that matter and also, how to demonstrate that would be the only thing that I noted about her report were errors, you know, typos. So, I told her, "Here are the innocent mistakes that I saw in your report, do with them as you wish." Even those types of, light errors, I wasn't gonna correct them. She was signing them. She was responsible for them. She was the one that was to defend her report. She was completely - it's - she assumed completely the ownership of that report.

Q. We'll come to the typos that you noted in a few minutes, Mr. Major. If I could get you to go to Tab 4? So, you have the draft report and then you send an email at 8:54 a.m. to Allan Rock and others at the university or actually let me - I forgot the one below that. So, you write an email to Professor St. Lewis right at the bottom of that page at Tab 4, "Many thanks to you and to Henry for your invaluable assistance." So, what was Professor St. Lewis' invaluable assistance?

R. Bien, elle a écrit le rapport et elle l'a fait de façon très expéditive. J'ai trouvé remarquable qu'elle accepte d'étudier cela aussi rapidement. Elle était à Toronto pour deux jours. Elle revenait et donc, elle l'avait fait en fin de semaine finalement. Puisque je l'ai reçu le lundi. Et donc, c'est sûr, un professeur évidemment doit non seulement enseigner, faire la recherche, mais aussi faire des tâches administratives dans l'université, mais dans ce cas ici, c'était vraiment exceptionnel ou remarquable qu'elle ait accepté de faire ça en fin de semaine. Je crois qu'elle était consciente de, de l'acuité du problème.

INTERPRETER: Well, she wrote the report and she did that in quite an expeditious way. I found that remarkable that she accept to go over that - study that as quickly. She went to Toronto for two days. She was coming back and so, she had done that finally during the weekend, given that I got it on the Monday. And so, of course, a professor, obviously, must not only do research and teach but also look after admin duties at the university but in this case, it was really exceptional, remarkable that she had accepted to do this during the weekend. I believe that she was conscious of the acuity of this problem.

Q. And then going in - up to the next email in this email string at Tab 4, you write to Allan Rock and others, to your knowledge was Professor St. Lewis aware of the email that you sent to your colleagues?

R. Non. Le, le, le courriel est adressé au recteur, Allan Rock, et à mes collègues vice-recteurs, Victor Simon, qui est - qui était vice-recteur ressources; Mona Nemer, qui est - qui était et qui est, qui est toujours vice-rectrice à la recherche et Nathalie Des Rosiers, qui était vice-rectrice à la gouvernance. Le - mon courriel s'adresse à eux. Ce sont les membres du comité d'administration. Point final.

INTERPRETER: The email is addressed to the Rector, Allan Rock, and my vice-rectors, my colleagues, Victor Simon, who was the Vice-Rector Of Resources, Mona Nemer, who is still Vice-Rector For Research and Nathalie Des Rosiers, who was vice-president to Governance. So, my email is addressed to them. They were members of the board, the committee of administration and that's it.

Q. And the same question for the email at the top of the page of Tab 4, which is document 18 that's circled in the top right hand corner. To your knowledge, was Professor St. Lewis aware of this 11:25 a.m. email that Mr. Rock sent to you and

others?

R. Absolument pas. C'est une communication entre membres du comité d'administration avec une copie conforme Andree Dumulon, qui était la directrice du service de communications de l'université et Julie Coffey, qui était la - l'adjointe exécutive du, du recteur, Allan Rock. Donc, le courriel s'adressait à ces personnes et à ma connaissance, personne d'autre ne pouvait en avoir connaissance.

INTERPRETER: Absolutely not. This is communication between members of the committee of the Board with a cc to Andree Dumulon, who was the Director for Communications at the university and Julie Coffey, who was the admin assistant to - of the President, Allan Rock. So, this email was to these people. So, for my knowledge, nobody else could have known about this.

Q. Okay. And the third paragraph of Mr. Rock's email to you, the one that starts, one last point..

R. Mm-hmm.

Q. ...I'm just going to ask you to indicate whether you consider some of these sentences to be accurate or inaccurate. So, he says, "So far, our dealings with her have been through Robert and have been scrupulously objective." From your observations, Mr. Major, and your dealings with Professor St. Lewis, is that an accurate statement?

R. Oui.

INTERPRETER: Yes.

Q. "And we have simply sought her view and have imposed no limitations, constraints or conditions." Is that an accurate statement?

R. Tout à fait.

INTERPRETER: Quite.

Q. "And she has been entirely free to say anything she wants." Is that accurate?

R. Tout à fait.

INTERPRETER: Quite.

Q. Tab 9, this is a November 18th, 2008 email that you sent at 5:45 a.m. to Professor St. Lewis and Henry Wong and you say, "Thank you for preparing this thoughtful analysis. It's extremely helpful and will be of great use to the university committee. I will be faxing to my assistant, Mireille, a copy where I indicate what may be typos. Please have a look at them before I make your evaluation available. Mireille will forward to you. Perhaps you might also want to look at the wording of recommendation one, which seems to assume that there is racism present already, although your report says clearly there is no evidence of it. In any event, I will be comfortable with any formulation you determine." Now, what was the purpose of asking Professor St. Lewis to look at the wording of recommendation one?

R. Il semblait y avoir une contradiction entre la recommandation et la teneur du rapport. Monsieur Rock l'avait souligné ou l'avait remarqué et moi également. Alors, le commentaire ici c'est est-ce qu'il y a une contradiction et si oui, bien, il faudrait l'expliquer. La phrase la plus importante c'est la, la dernière. C'est : « *I will be comfortable with any formulation you determine.* » C'est - voici le - regardez, examinez. Est-ce qu'il y a une contradiction? Vous déciderez. Et puis, c'est à vous de décider qu'est-ce qui serait la meilleure formulation. J'ajouterais peut-être, étant donné ma déformation professionnelle de, de littéraire et de, et de lecteur professionnel, que je suis assez sensible à des - et pendant 40 ans, j'ai, j'ai, j'ai corrigé des copies d'étudiant également et donc, je suis assez sensible à, à - aux coquilles, aux petites erreurs et à, à ce qui semble être une inconsistance dans un document, dans un travail ou dans un, un rapport. Alors, est-ce qu'il y avait - la question c'est est-ce qu'il y avait

inconsistance? Regardez. Vous, vous déciderez.

INTERPRETER: It seemed it was a contradiction between a recommendation and the report itself. Mr. Rock had underlined it or had observed it and I also had and so, the comment here was, is there a contradiction and if so, well, one would have to explain it. The most important sentence would be the last one, "I will be comfortable with any formulation you determine." Here, look, examine, is there a contradiction? You will decide and then it's up to you to decide what will be the best way of writing that, expressing that. I would maybe add, given my literary background and reader, I'm quite sensitive and for 40 years, I corrected student copies also. So, I'm rather sensitive or - to typos or innocent errors, for something that seems to be inconsistent in a document, in work, in a report. So, the question, was there a lack of consistency? Well, look. You look and you decide.

Q. Okay. So, the typos that you asked your assistant to fax to Professor St. Lewis, we see that at Tab 10. So, on your behalf, Mireille, your assistant, emails to Professor St. Lewis, "Further to Mr. Major's last email, please find attached pages that are showing minor changes made by Mr. Major." And we'll take a quick look at what those fax pages. So, after the green page of the same Tab 10, these are the faxed pages, Mr. Major, that your assistant sent?

R. Non.

INTERPRETER: No.

Q. Tab 10? Or am I on the wrong tab?

R. Ah, pardon, excusez. Après la feuille verte, oui. Okay. Oui. Donc, il y avait des pages, pas toutes les pages, mais seulement celles où je voyais une coquille, une erreur. Par exemple, la première page...

INTERPRETER: Oh, sorry. Pardon me. Oh, the green

sheet. Okay. Yes. So, there were pages, not all of them but only the ones where I could see an error, a typo. For example, the first page.

Q. So, 2 of 17 of the report?

5 R. Oui. Et peut-être pour, pour le bien fait du, du jury, ce signe-là dans la marge qui va comme ça, c'est le signe des typographes qui veut dire *delete*. Et donc, parce que la - *is* ne devrait pas être. C'est *in*. Et puis le *and* est de trop. Donc, il faut l'enlever. Alors, c'est le genre de, de, de
10 remarque que j'ai fait. Que j'ai faite.

INTERPRETER: Yes. And maybe to - for the jury's advantage, that sign in the - on the side that goes like that, it's a typo, a typographical sign that says to delete. So, it shouldn't be "is". It should be "in". And the "and was", needed
15 to be deleted. So, it's the type of comment or observation that I made.

Q. Okay, keep going. Just...

R. Ah, oui, on continue?

INTERPRETER: All right, you want me to continue?

20 Q. It's not gonna take - well, it won't take long.

R. Ah, bon, d'accord. Au milieu de la page 3 de 17, en plein milieu, « *The student has and has of right appeal.* » J'ai souligné puis j'ai mis un trait dans la marge. Je ne savais pas ce que ça voulait dire ça. Mais ensuite, je crois que madame
25 St. Lewis m'a expliqué que c'était du jargon légal et que *as of right appeal*, c'était le bon - la bonne expression. Le paragraphe suivant, y'a, y'a *step six* ensuite le paragraphe suivant, « *The report would have been most useful.* » Et là, je trouvais qu'il manquait un pronom relatif, sans doute là. « *In the academic*
30 *fraud process, that posed difficulties.* » Alors, il fallait peut-être faire la correction. À la page 5 de 17, la même chose, la phrase se lie : « *It is impossible to determine a psychological*

state of a student regarding during the examination. » Et là, ça me semblait bizarre comme France [sic] - comme phrase donc, voulez-vous regarder ça. Page 6 de 17, l'avant dernier paragraphe, même chose : « *It should be noted that it appellate* bodies... » Je comprenais pas là. Y'avait, y'avait probablement une erreur là. Page 9 de 17, encore là, la phrase pour moi était difficile à comprendre : « *Which would retain the F on her transcript but not count it in the calculation of her GPA.* » C'est grade point average, GPA. Alors, je pose la question. Y'a un point d'interrogation. Est-ce qu'il faut un, un, un adverbe négatif? Not là. Page 14 de 17, ah, c'est là qu'on arrive à ma question sur la, la cohérence : « *This section sets out recommendations for the university in light of the legitimate concerns.* » Alors, est-ce que c'est comme le rapport dit qu'il y en a pas ou y'a pas d'indication ou pas y'a pas de preuve de racisme systémique, est-ce que c'est vraiment le mot qu'elle veut employer? Bien, c'est un point d'interrogation où ça veut dire « Regardez ça. Examinez et décidez. » Et là, l'autre *that SAC cooperate with university in allowing....* Bien, je me souviens plus là pourquoi c'est là ça. De toute façon, c'est resté tel quel dans le rapport final.

INTERPRETER: All right. In the middle of the page 3 of 17 in the middle, right in the middle, I underlined and I put a slash in the margin. I didn't know what it meant. And then I think Ms. St. Lewis explained to me that it was legal jargon and that as a right appeal, it was the right expression. The following paragraph, step six, and then the next paragraph, the report would have been most useful. I thought there was missing a relative pronoun, "In the academic thought process, that posed difficulties." So, maybe there needed to be an amendment or correction and then at page 5 of 17, the same thing, the sentence reads, "It is impossible to determine the psychological state of a

student regarding during the examination." And then that seemed to me strange as a sentence. Will you look at that? Then 6 of 17, the second last paragraph, same thing, "It should be noted that it appellate bodies..." I didn't understand. There was probably a mistake there. Page 9 of 17, again there, the sentence for me was difficult to comprehend. "Which would retain the F on her transcript but not count it in the calculation of her GPA, grade point average, GPA." I asked the question, there's a question mark. Do we need a negative adverb? Not, for example. Page 14 of 17, oh, there we arrive to the - to my question regarding coherence, "This section sets out recommendations for the university in light of the legitimate concerns." So, as the report says that there are no indications or there's no evidence of systematic racism, is it really the word that she wants to use? But that's a question mark. That means look at that and check it out and decide. And then - well, I don't remember why that was, but in any event, it remained the same in the report, in the final report.

Q. And is there anything else you communicated besides these squiggles and underlinings that we see here at Tab 10, Mr. Major, prior to receiving the final report from Professor St. Lewis?

R. Non.

INTERPRETER: No.

Q. And Tab 11, you did respond to Professor St. Lewis about the email your assistant had sent and you'll see your November 18, 2008, 12:29 p.m. email to Professor St. Lewis, "Please read suggested by. I do not want to change your report even on details that I'm not signing. Best wishes." So, why did you send that email to Professor St. Lewis?

R. Bien, c'est parce que mon assistante Mireille en a envoyant la liste des, des petites corrections que je - ou en

fin des - ce qui me semblait des coquilles, elle avait dit à madame St. Lewis : « *Here's a list. Please attach - find attached pages that are showing minor changes made by Mr. Major.* » Alors, non, moi, moi je précisais tout de suite, « Je ne fais pas de changement. C'est pas à moi de faire les changements. Je ne
5 signe pas le rapport. » Et donc, c'était de signaler des coquilles. « Est-ce que vous voulez y, y faire quelque chose? C'est à vous de décider. » Je voulais pas que ça soit ambigu en, en autre mot. Je voulais que Mireille, qui par ailleurs était
10 excellente quand elle disait « *Changes made by* », je voulais pas que ce soit ambigu là ou que ce soit pas compris par madame St. Lewis. Je ne faisais pas de changement. Je signalais des - peut-être des erreurs. À elle de faire le changement, si nécessaire.

INTERPRETER: Well, it's because my assistant,
15 Mireille, when she sent the list of small corrections or what appeared to me as typos, she has told Ms. St. Lewis, "Please attach - find attached pages that are showing minor changes made by Mr. Major." So, no, I was indicating I don't make change. It's not up to me to make change. I'm not the one authoring the
20 report and therefore, and it was underscoring of the small typos. You wanna do anything about them, it's up to you to decide. I didn't want it to be ambiguous, in other words. I wanted to - Mireille was excellent as an assistant, when she said "The changes made by", I didn't want it to be ambiguous or not understood by
25 Ms. St. Lewis that I wasn't making changes. I was simply bringing to her attention possible mistakes. It was up to her to make changes, if required.

Q. And Tab 12 is the final report of an evaluation of the Student Appeal Centre report sent to you and others by
30 Professor St. Lewis, right?

R. Oui.

INTERPRETER: Yes.

Q. And Tab 13, you email Professor St. Lewis and say, "Thank you so much for undertaking this task and writing your report in such short time lines. In my mind, this is a major contribution to the university community. I will get it translated and make sure it gets the equivalent distribution of the initial report to which it is not only an answer but an antidote. It raises the issue to the proper level for the benefit of our whole academic community. There should be official gestures such as presentation to the Senate and other bodies. I would like to discuss this with you in the following days." So, why did you consider, Mr. Major, that Professor St. Lewis' evaluation report was a major contribution to the university committee? Community?

R. Bien, est-ce que la question porte sur l'usage du mot « antidote »?

INTERPRETER: Well, is your question about the word "antidote"?

Q. I was gonna get to the antidote...

R. Okay.

Q. ...next question, but if you really want to deal with antidote now, you can. You can deal with it both. You're saying, this is a major contribution to the university committee - community and it is an antidote to the SAC's report entitled "Mistreatment of Students, Unfair Practices, and...

R. Mm-hmm.

Q. ...Systemic Racism". So....

R. Bien, vous remarquez que dans ce courriel, j'utilise deux fois l'expression « *Contribution to the university community.* » Et un peu plus loin, « *For the benefit of the whole academic community.* » Et plus tôt, j'avais utilisé les mêmes expressions sur la communauté universitaire. Il faut comprendre - pourquoi parler de la communauté universitaire? Il faut

comprendre que l'université, c'est une communauté de - d'étudiants
et de professeurs. Et quand il arrive quelque chose qui, qui fait
un choc et qui bouleverse ou peut bouleverser des membres de
cette communauté, c'est toute la communauté qui est affectée. Les
5 étudiants, les professeurs. Et donc, on veut que la communauté
fonctionne. On veut que la communauté ne fonctionne pas dans la
méfiance ou dans - ou dans les conflits là larvés et donc, pour
moi, c'était une contribution importante à la communauté des
professeurs et des étudiants de l'université. Pourquoi je
10 considérais que c'était un antidote? Bien, c'est assez clair que
je trouvais que le, le rapport de madame Gervais était un poison.
Le - les termes sont un peu durs, un peu peut-être difficiles.
D'ailleurs, je ne juge pas non plus les intentions de madame
Gervais. J'y connais pas ses intentions, mais j'ai lu le rapport
15 qu'elle a - qu'elle avait produit au nom de - du Centre de recours
étudiant et j'ai trouvé déplorable que ce rapport, avec très peu
de données et très peu de substance condamne l'ensemble de
l'université. C'est pas drôle de se faire accuser de racisme
systémique. C'est tout le monde qui est noirci par une accusation
20 comme celle-là et au premier titre, évidemment, les professeurs,
parce que c'est eux qui corrigent et c'est eux qui donnent les
notes. Alors, je trouvais que c'était vraiment toxique son
rapport parce qu'elle condamnait toute l'université. Je trouvais
aussi que ce rapport minait ou pouvait miner la confiance que les
25 étudiants avaient dans tout le processus de faire appel de leurs
notes. Si quelqu'un leur dit : « C'est peine perdue. Tout ça,
c'est - toute institution fonctionne comme une - un univers
raciste et discriminatoire. » bien là, les étudiants hésiteraient
sans doute à faire appel de leurs notes et y'a toute sorte de
30 processus à l'intérieur de l'université au niveau départemental,
au niveau facultaire, au niveau universitaire pour faire en sorte
que les étudiants aient le droit de faire appel et exercent ce

droit. C'est pas un droit théorique là. Les étudiants peuvent contester leurs notes et de toute sorte de façon. Alors, je trouvais que ça pouvait miner la confiance des étudiants et donc, les priver d'un droit. Ils, ils, ils hésiteraient à l'exercer ce droit-là s'ils n'avaient pas confiance. Troisièmement, ce que je trouvais toxique, c'était le fait que le rapport de madame Gervais donnait l'impression que les étudiants étrangers étaient les plus portés à plagier et ça, je trouvais ça inacceptable. Les étudiants étrangers sont déjà fragilisés en quelque sorte par le fait qu'ils sont dans un pays étranger et l'université faisait des efforts énormes pour recruter des étudiants étrangers. J'étais responsable du bureau international comme vice-recteur. Le - je me souviens d'un chiffre en particulier dans les années 1000 - 2007, 2008. Nous avions des étudiants de 155 pays différents à l'Université d'Ottawa et c'était un élément de fierté. C'était pour, pour nous, quelque chose d'extrêmement important. Évidemment, y'avait quelques pays où y'en avait très peu. Je pense que c'était - je pense que y'avait un Chéchien sur les 155, mais enfin...

INTERPRETER: Well, you will note that in this email, I use twice, "Contribution to the university community," and then a little further, "Benefit of the whole academic community." and earlier, I had used the same expressions about the university community. You have to understand why speak of university community? You have to understand that the university is a community of students and professors and when something arises that is controversial and upheaval or may cause upheaval of members of that community, it's the whole community that is affected. The students or professors and therefore, we want for the community to function. We want the community to not work in fear and conflict in bad conflicts. For me, it was an important contribution to the community of the professors and students. Why

did I consider it an antidote? Well, it's fairly clear that I thought that Mrs. Gervais' report was poisonous. The terms are harsh, may be difficult. In fact, I'm not judging the intentions of Ms. Gervais. I don't know what her intentions were, but I read her report, the one she produced in the name of the SAC, Student Appeal Centre, and I found deplorable that this report had few - so little data and so little substance and yet condemned the entire community of the.... It's not funny to be charged with systemic racism. Everyone is sullied. Not only the students, but the professors. They're the ones that are marking and handing out marks. So, I found it toxic, her report, because she was condemning the university as a whole. I found that also the report undermined or could undermine the confidence of the students in the whole process of appealing their marks. If someone tells them it's a lost cause, that's all, you know, the institution is a universe of racism and discrimination, well, students would hesitate, undoubtedly, to appeal their marks and there are all kinds of processes within the university when it comes to the departments, at the faculties, at wider - at a university level to ensure that students have the right to appeal and also that they avail themselves of that right. It's not a theoretical right. They can challenge their marks in many different ways. So, I found that this could undermine the confidence the students had and deprive them, and in doing so, they would hesitate to avail themselves of that right if they lacked confidence in the system. Thirdly, what I found toxic is that Ms. Gervais' report gave the impression that the foreign students were the larger proportion of plagiarism, accounted for the larger proportion and that, I found it deplorable. Already, these foreign students are fragile by the fact that they're in a strange country and the university was making enormous efforts to recruit foreign students. I was responsible for the international

office, as a vice president, and I recall one data in particularly in 2007, 2008, we had students from 155 different countries at Ottawa, U of O. And it was a source of pride. For us, we saw it as something important, extremely important. Evidently, there are
5 few countries where there are few students. I think that we had one Chatian (ph) or one Chechian, sorry.

INTERPRETER: Interpreter's correction.

R. ...on faisait beaucoup d'efforts pour recruter des étudiants étrangers. Donc, le rapport de madame Gervais les
10 ciblait comme étant plus porté à plagier. Ce que je trouvais déplorable et peut-être c'est ça qui justifie aussi mon, mon vocabulaire assez fort là, toxique, antidote, c'est que à l'université, y'a des endroits où on soulève ce genre de questions. Les étudiants sont sur des comités aux départements, aux facultés, au Sénat. Des études - et c'est le genre de chose,
15 le Sénat s'occupe des choses scolaires et si y'avait un problème, les représentants étudiants auraient pu soulever ça ou madame St - madame Gervais, par l'intermédiaire des représentants étudiants, aurait pu faire une sortie au Sénat. De plus, moi, je
20 rencontrais, chaque mois, le vice-président des affaires étudiantes de la Fédération des étudiants, Seamus Wolf, à l'époque. Je le rencontrais chaque mois où il apportait là toute sorte de, de préoccupation et on essayait de régler les problèmes et monsieur Wolf, qui était responsable du Centre de recours
25 étudiant, ne m'a jamais parlé qu'il y avait un problème de discrimination, de racisme, à l'université et c'est lui qui était responsable, qui était le patron de madame Gervais et j'ajouterais que l'administration, c'est-à-dire le, le comité d'administration, recteur et vice-recteur, régulièrement nous rencontrions le -
30 l'exécutif de la Fédération des étudiants. En moyenne, à tous les deux mois et là, là, ça brassait fort. Les, les, les, les, les, les chefs politiques étudiants là nous disaient nos quatre vérités

et puis, vous devriez faire si, vous devriez faire ça. C'est scandaleux, etcétera. C'était d'excellentes réunions. Jamais cela n'avait été abordé dans cette réunion - ces réunions régulières entre la - le syndicat, le ou l'exécutif des étudiants et le conseil d'administration et là, tout d'un coup, boum, un, un rapport tendancieux et mal fait et nuisible pour les étudiants et pour la communauté arrivait.

INTERPRETER: But we made big efforts to correct for - to attract foreign students and this report was kind of targeting them as being more likely to plagiarize. What I found deplorable and maybe that's what justified my word choice, which was quite strong, toxic, antidote, it's that in university, there are forums to raise those kinds of questions. Students participate to committees in the departments, in the faculty, at the Senate level. The Senate takes care of scholarly things and if there were a problem, those student reps could have raised the issue or Ms. Gervais could have, via the student reps, they could have intervened at the Senate level. Moreover, I, each month would meet the student vice-president for these student Federation. I met him every month where every month, where he would bring forward all kinds of concerns and we worked to resolving those. And Mr. Wolf who was the - responsible for the SAC, he never had raised the issue of systemic racism at the university. And he's the one - he was Mrs. Gervais' boss. And I would even go so far as to add that the administration, that is to say, the Governance committee, the president and vice president, regularly, meet with me, the executive of the Student Centre roughly every two months and that, you know, we had some very charged discussions. These young politicians told us you need to do this, you need to do that, this is scandalous. These were fantastic meetings. Never had this been raised during those meetings, these regular meetings between the Student Federation,

the executive of it, and the Board of Governance and all of a sudden, bang, a very sensational report, harmful to the community and students is just dropped.

Q. And then at Tab 5, you have the final report from Professor St. Lewis on November 18th, and then Tab 5, the university releases this media release we see here on November 25th, 2008 and releases publicly Professor St. Lewis' evaluation report, correct?

R. Oui.

INTERPRETER: Yes.

Q. And can you turn to Tab 7? I'm now looking at what we've been calling these FIPPA documents that Mr. Rancourt refers to as access to information documents in his articles in issue. This document here from Andree Dumulon, the email November 26th, 2008, 7:00 a.m. to you and Allan Rock and others, to your knowledge, did Professor St. Lewis - was she aware of this email that forwarded the Ottawa Citizen article?

R. Non.

INTERPRETER: No.

Q. And Tab 6, and I'm looking at your email to Professor St. Lewis at the bottom of Tab 6, so a November 26, 2008 11:26 a.m. email, if you turn to page 2 of 2, you are saying, "Many thanks for the report you crafted. The press is interesting and enables the community to be well informed. Your contribution to the debate is remarkable." And why was Professor St. Lewis' contribution to the debate remarkable?

R. Bien, madame St. Lewis avait produit un rapport qui remettait sérieusement en question le rapport de - du Centre de recours étudiant, le rapport de madame Gervais et elle montrait, de façon très claire, que le rapport était mal fait malheureusement, et qu'il était inflammatoire et qu'il ne permettait pas de, de, de distinguer si oui ou non il y avait du

racisme à l'université ou de la discrimination et donc, sa contribution mettait des choses de façon cohérente et logique et posait les véritables questions.

INTERPRETER: Well, Ms. St. Lewis had produced a report that was seriously challenging the SAC Report, *madame* Gervais' report, and she had highlighted clearly that the SAC report had been botched. Unfortunately, it was incendiary and that it didn't allow to distinguish if yes or no there was systemic racism or discrimination at the university. So, its contribution was to coherently and logically ask questions and ask the right questions.

Q. And Tab 14 of your book, you're sending Professor St. Lewis an email, November 26th, and say, "An additional bit of information, this besides the workshops offered to all international students by the international office." And you've attached an email from Rachel Ouellette sent to you that day, as well and - or, actually, it's from Marie-Lise Blain to Rachel Ouellette and Marie-Lise Blain is the Student Academic Success Service at the university?

R. Non, pas exactement.

INTERPRETER: No, not exactly, no.

Q. What is she? Oh, she's the manager?

R. Oui.

INTERPRETER: Yes.

Q. Academic Writing Help Centre?

R. C'est ça. Le CARTU, c'est le Centre d'aide à la rédaction des travaux universitaires. Donc, elle était la directrice de ce centre d'aide aux étudiants et ce centre d'aide relève du SASS, le Service d'appui au succès scolaire. Et en montant l'échelle, relève de moi ou relevait de moi.

INTERPRETER: That's right. The CARTU, it's the Assistance and Drafting Centre. She is the director of that self-

help centre and that centre answers from the SASS, S-A-S-S, the Student Success Support Centre. And going up, eventually, it falls under my purview.

Q. Right. And what is Marie-Lise Blain saying about Professor St. Lewis' report?

R. Bien, ce qu'elle dit c'est qu'elle l'a lu. Elle trouve - elle le trouve très intéressant et qu'est-ce qu'elle dit c'est que elle veut simplement nous informer - m'informer moi comme vice-recteur. C'est pour ça qu'elle écrit à Rachel Ouellette, qui était mon adjointe exécutive et elle lui dit : « J'espère que vous êtes bien informé de tout le travail qu'on fait au CARTU, au Centre d'aide, pour mettre les étudiants en garde contre le plagiat. Et donc, elle parle de différences culturelles, que les étudiants étrangers ne sont pas nécessairement formés de la même façon et ils sont peut être moins sensibilisés à la chose et elle parle aussi de toutes les, les, les interventions que le CARTU faisait en salle de classe. Elle donne des chiffres là que - en l'année 2007, 2008, nous avons donné 41 présentations et rencontré 1 676 étudiants. Donc, elle, elle, elle, elle voulait s'assurer qu'on soit au courant du bon travail fait par le CARTU. J'étais assez au courant.

INTERPRETER: Well, what she's saying is that she read it. She found it interesting. And what she's saying is that she simply want to advise us or tell me as vice-president. That's why she wrote to Rachel Ouellette, who was my administrative assistant. I hope that you are well informed of all the work we do at the CARTU and the help centre to ensure that students are aware of plagiarism and are on the guard. And she speaks of cultural differences, that foreign students may not necessarily be trained the same way. They may be less sensitive or less aware of the issue, and she also speaks of all the interventions that the CARTU would make in the classroom itself. She gives me numbers.

In 2007, 2008, there were 41 presentations and then a thousand some students, 16-76 students were met. She wanted to ensure that we were aware of all the good deeds of the CARTU and keep me informed.

5 Q. And what position is she taking on Professor St. Lewis report in that last paragraph of the email that you forwarded to Professor St. Lewis?

10 R. Ce qu'elle dit c'est que il - pour prévenir le plagiat, il faut bien informer les étudiants et j'endosse les recommandations de la professeure Joanne St. Lewis parce que madame St. Lewis faisait des recommandations pour que les étudiants et même les chefs étudiants soient mieux informés de tout le processus d'appel et donc, elle était très heureuse des recommandations de madame St. Lewis.

15 INTERPRETER: What she's stating is that, to prevent plagiarism, we need to well inform students and I adopt the recommendations of Professor St. Lewis because St. Lewis was making recommendations for the students and even their leadership, student leadership to be better informed about the whole appeal process and therefore, she was very happy about Ms. St. Lewis' 20 recommendations.

Q. And you got feedback from somebody else at the university at Tab 15?

R. Mm-hmm.

25 INTERPRETER: Mm-hmm.

Q. Feedback about Professor St. Lewis' evaluation report and what is this about?

30 R. Bien, je trouve ça intéressant, ce François, François Chapleau, c'est un professeur de biologie, un excellent professeur de biologie. Y'a même un poisson qui porte son nom, qui a été nommé par un, un Australien, de faite, mais François Chapleau était, pour les cinq ans précédents, le vice-recteur

associé - le vice-recteur associé. En fin, il était le
registraire et il avait fini son mandat et là, comme d'autres
membres de la communauté, il, il avait vu cette controverse au
sujet du plagiat et là, il m'écrit en disant : « J'ai une idée.
5 Pourquoi ce qu'on met pas dans notre logiciel d'inscription, le
Rabaska, quelque chose sur le plagiat pour que dès le moment où
les étudiants sont inscrits à l'Université d'Ottawa, ils soient
informés de cela. » Donc, j'ai trouvé ça très intéressant et pour
moi, c'est un bel exemple comme d'ailleurs dans le cas de madame
10 Blain. C'est un bel exemple de membres de la communauté qui sont
intéressés à ce qu'à fonctionne bien et même quand ils n'ont plus
de responsabilités directes, interviennent. « J'ai pensé à ça. »
Il faut dire qu'on avait introduit tout un système informatique là
pour l'inscription et l'accompagnement des étudiants. On avait
15 beaucoup travaillé là-dessus et François voyait une autre
utilisation possible.

INTERPRETER: Well, I find it interesting, this
François Chapleau, he's a biology professor. Excellent bio,
biology prof. There's even a fish named after him, named by an
20 Australian in fact, but François Chapleau was, for the previous
five years, the vice-president adjunct. In any event, he was the
registrar and he had terminated his mandate and as other members
of the community, he was - he had seen this controversy regarding
plagiarism and he wrote to me and said, "I have an idea. Why
25 wouldn't we put in our registration, software registration,
ABASCA, something about plagiarism, so that as soon as students
register for U of O, they are aware that or attuned to that." So,
I found that very interesting and for me, that was a nice example,
as in *madame* Blain's example, of members of the community stepping
30 up, interested in things happening and even when they don't have
any direct responsibility, they feel like intervening or adding to
the discourse. I thought this - you have to understand that we

had launched a whole computer system for registration into a company. We had worked very hard at that and François could see another use, possible use of it.

Q. And we see his reference to that in the first two
5 lines of his email to you on November 28th...

R. Oui.

INTERPRETER: Yes.

Q. ...at 11:19?

R. Oui. Oui.

INTERPRETER: Yes.

Q. He's saying he read Professor St. Lewis' report
10 with interest.

R. Oui.

INTERPRETER: Yes.

Q. Four of the recommendations want to give more
15 visibility to what the plagiarism regulations?

R. Oui.

INTERPRETER: Yes.

Q. And then, he's suggesting that idea...

R. Oui.

INTERPRETER: Yes.

Q. ...of including something when the students
20 register online?

R. Oui.

INTERPRETER: Yes.

Q. Yeah, okay. And when did Professor St. Lewis'
25 mandate for evaluating the SAC report end?

R. Bien, y'a - son mandat c'était d'écrire un
rapport de - d'analyser la chose et puis de voir si elle pouvait
30 nous faire des recommandations, voir s'il y avait un problème et
je lui ai demandé aussi de - puisqu'elle était le, le - la
signateur du rapport de - d'intervenir, si besoin, soit avec la

presse, soit dans les instances universitaires comme le Sénat et son mandat se terminait là, point. C'était tout.

INTERPRETER: Well, her - there is - her mandate to draft a report, to analyze the report and see if she could draft recommendations to see if there was a problem and I asked her also to, given that she was the author of the report, to intervene, if needed, either with the press, either in the university forums, like the Senate, and her mandate stopped there. That's it. That's all.

Q. And did you provide Professor St. Lewis with a second mandate?

R. Oui. Une des recommandations de madame St. Lewis était qu'il y ait une évaluation indépendante de la situation et de travailler avec le Centre de recours étudiant pour, pour faire le travail que - qui aurait dû être fait, sans doute, par madame Gervais, qui n'avait pas été fait; pour voir s'il y avait vraiment racisme systémique et discrimination. Et encore là, la personne la plus compétente dans ce domaine-là, puisqu'elle dirigeait le Centre d'enseignement et de recherche des droits de la personne de l'université, puisqu'elle avait un parcours remarquable comme consultante, comme expert-conseil pour le, le procureur de l'Ontario, etcétéra, le - pas le *Attorney General*. C'est le - c'est quoi? Bon, en fin, je le sais pas là, mais le responsable de la justice en Ontario, comme d'ailleurs elle avait...

INTERPRETER: Yes. One of the recommendations from Ms. St. Lewis was that there be an evaluation, an independent one, of the situation and to work with the SAC to do the work that should have been done by Ms. Gervais, that hadn't been done, to get to the root and to see if there was, indeed, systemic racism and discrimination. And there again, the person, the most competent person in that field, given that she was directing the centre - the university's - for human rights and given her past as

a consultant and expert advisor for the Attorney General of Ontario - not the Attorney General - what is it called? I forget. But anyway, the responsible for justice in Ontario.

LE TRIBUNAL : Procureur général.

5 R. Procureur général de, de l'Ontario. Comme elle avait aussi été reconnue par ses pairs et là encore, je vais avoir besoin de votre aide, *bencher*.

INTERPRETER: The Attorney General. As she had also been recognized by her peers and then I will again need your help
10 as a *bencher*.

LE TRIBUNAL : *Bencher*, bonne question.

INTERPRETER: A *bencher*, that's a good question.

R. Bon, voilà.

LE TRIBUNAL : Ça m'échappe là sur le coup, oui, mais de toute façon...

15 R. Alors, ce que j'ai compris...

LE TRIBUNAL : On les appelle nous des *benchers*, c'est pour ça, en français aussi.

INTERPRETER: Administrator. In French, we also use
20 *bencher* so....

R. Ah, oui, vous êtes - bon. Ce que j'ai compris, c'était que le *bencher*, c'était un membre du comité de - des Bureaux des gouverneurs de, de la Société des, des avocats de l'Ontario, *Upper Law Society*. Donc, c'était une femme avec un, un
25 parcours, avec des, des compétences reconnues par ses pairs.

J'imagine que vous avez pris connaissance de son CV. Alors, pour faire cette analyse indépendante, puis Dieu sait que on savait qu'elle était indépendante parce que dans son premier rapport au mois de novembre, elle attaquait passablement l'université dans le
30 texte et donc, je lui ai demandé de faire une analyse de la situation. Est-ce qu'il y a, oui ou non, racisme, discrimination systémique à l'université?

INTERPRETER: What we've understood is that the
bencher was a member of the committee of the Board of Governors
from the Law Society of Upper Canada. So, this was a woman who
had held positions and had capacities and aptitudes recognized by
her peers. I'm sure you've become aware of her CV. So, to
conduct this independent analysis and Lord knows, that we knew
that she was independent because in her first report in November,
she was attacking, fairly well, the university in her document.
So, I asked her to analyze the situation. Is there, yes or no,
racism, discrimination, systematically at the university level?

Q. And do we see that at Tab 16, the mandate that
you...

R. Oui.

INTERPRETER: Yes.

Q. ...the second mandate?

R. Oui.

INTERPRETER: Yes.

Q. And that's the second paragraph, that you've
asked her to evaluate the academic fraud process at the university
as a whole?

R. Oui.

INTERPRETER: Yes.

Q. Okay.

R. Et j'ai aussi écrit une autre lettre qui est pas
là, mais au, au vice-président de l'Association des, des
étudiants, la Fédération des étudiants demandant leur
collaboration pour faire cette étude.

INTERPRETER: And I also wrote another letter that's
not there, to the VP for the Student Federation asking their
cooperation to go ahead with this study.

Q. And then Tab 17, if you look at the second page
of this email string, Professor St. Lewis writes you on March 20th,

2009, thanks you for that letter of March 16th, which you just referred to and on the first page of Tab 17, you say to Professor St. Lewis, "I think you've made very useful observations and your reflections on the process are quite convincing. I don't have a problem with any of what you're bringing forward. There might be a problem with the consistency of the data, but you will be able to advise when you've seen it." So, she takes on the second mandate?

R. Oui.

INTERPRETER: Yes.

Q. Okay. Now, let's now switch to Mr. Rancourt's Exhibit 3, which is the - and the Registrar will give you a copy of that, Mr. Major. This is one of the articles in issue in this libel action. And it - do you see the paragraph number seven that's highlighted?

R. Mm-hmm.

INTERPRETER: Mm-hmm.

Q. And underneath that, this article deals with you. It says, "Former VP Academic, Robert Major, is also found stating to a concerned student that the 'independent' St. Lewis report will definitively resolve the matter (of the troublesome SAC report). In his November 2008 email, Major actually says, 'The university has received and will make public this week an evaluation by an independent assessor of the report of the Student Appeal Centre. I believe this analysis will answer your questions on the mandate of the Senate Appeals Committee and on the whole appeals process. I invite you to read it carefully.'", which appears above that black box.

R. Okay.

Q. It's kind of hidden up there. First of all, did Mr. Rancourt ever contact you, prior to publishing what he says about you in this article?

R. Non.

INTERPRETER: No.

Q. And secondly, was the matter that you wrote this November 2008 email to this student dealing with - to use Mr. Rancourt's words, "the troublesome SAC report". Is that what your email was about to that student, was the SAC report or Professor St. Lewis' evaluation report?

R. Je pas sûr exactement là de, de la question. Je, je sais que cet étudiant n'était pas du tout intéressé par ces questions de, de racisme ou de discrimination. Cet étudiant soulevait son propre problème et je l'avais sans doute mal compris en, en le référant au rapport, mais sa, sa question - ça n'avait rien à voir avec, avec ça là.

INTERPRETER: I'm not sure exactly of your question now. I know that that student was not at all interested by these questions of racism or discrimination. That, or this student, was bringing up his own problem and I had undoubtedly not well understood him by referring him to the report but his question had nothing to do with that.

Q. Nothing to do with what?

R. *With* - avec le rapport comme tel ou avec - l'étudiant, il était - bien son problème, de faite, c'était qu'il, qu'il était en conflit avec, avec le, le Comité d'appel du Sénat parce que des professeurs avaient détruit ses copies d'examen et donc, c'était très difficile de, de faire une ré-évaluation de son travail parce que les copies d'examen étaient détruites, mais évidemment, les copies d'examen sont gardées une année et ensuite sont détruites parce qu'à, à 34 milles étudiants, on peut pas garder ça pour - de façon indéterminée et c'était ça son problème, la question de - il trouvait que c'était pas correct que l'université - que ces deux professeurs-là de science sociale ait détruit ses copies d'examen. Je sais pas si je réponds à la

question là.

INTERPRETER: With the report, per se. Or, you know, the student, he was - well, his problem, in fact, was that he was - he was experiencing a conflict with the Senate Appeal Committee because professors had destroyed his exam copy. So, it was very difficult to proceed with a re-evaluation of his work because the exam copies were destroyed but obviously, the exam copies are kept for a year and then they're destroyed because, you know, with 34K students, you can't keep that for an indeterminate period of time. And that was his problem, the question of he found that it wasn't right that these two professors for Social Sciences would have destroyed his exam copies. I don't know if I've answered your question.

Q. No, it does, and Tab 18 is the email string between you and this student, correct?

R. Oui.

INTERPRETER: Yes.

Q. Okay. And it had nothing to do with the SAC's annual report or Professor St. Lewis' report, what his concern was, if I'm understanding your testimony?

R. Oui. Lui, lui n'était pas intéressé à des - aux - à ces questions de racisme ou de, ou de discrimination. Il était intéressé à son propre problème, ce qui est tout à fait normal. J'avais peut-être mal compris, mais dans mon courriel en haut de la page, je pense que je répons - je répons mieux à, à ses préoccupations et de fait, le, le rapport de madame St. Lewis était pas tellement éloigné de ses préoccupations puisque son rapport porte beaucoup sur les processus, sur la façon de suivre le, le processus dans le cas de - d'appel de note.

INTERPRETER: Yes. He was not interested to those questions of racism or of discrimination. He was interested in his own problem, which is quite normal. I had maybe

misunderstood, but in my email on top of the page, I think that I reply or I answer - I respond better to his concerns and, in fact, Mrs. St. Lewis' report was not that far away from his concern, because the report talks a lot about the procedures, the ways of following the process in the case of appeals of our....

Q. Right. So now, do you still have Exhibit 3 in front of you, the article in issue? You'll see in number four and number five, paragraphs number four and number five as numbered here, Mr. Major, that Mr. Rancourt states that, "Professor St. Lewis enthusiastically toiled to discredit a 2008 SAC report about systemic racial discrimination at the university." And in number five, he says that, "St. Lewis uncommon zeal to serve the university administration." Did you observe, at any time, Mr. Major, and in your capacity as VP of Academic that Professor St. Lewis enthusiastically toiled to discredit the 2008 Student Appeal Centre report?

R. Absolument pas.

INTERPRETER: Absolutely not.

Q. And did you ever observe Professor St. Lewis demonstrating an uncommon zeal to serve the university's administration?

R. Absolument pas. Elle a fait ce que tout professeur compétent et consciencieux ferait quand son doyen, son directeur ou en occurrence, le vice-recteur, demande : « Est-ce que tu peux nous rendre service? On a besoin d'étudier ça. » Donc, elle a fait ça et l'a fait de façon très compétente.

INTERPRETER: Well, absolutely not. She did what any competent and conscientious professor would do when his dean or his director or the vice-president, in this case, asked her can you render us a service and, yes, she did so and she did that very competently.

Q. And last question, you see in paragraphs five and

six of this Exhibit 3, this article that Mr. Rancourt wrote, he says, "The newly released ATI records are disturbing far beyond the non-tenured Professor St. Lewis uncommon zeal to serve the university administration. The ATI records expose a high level cover-up orchestrated by Allan Rock himself to hide the fact that the St. Lewis efforts were anything but independent, as she characterizes her report on the first page." And he made a similar accusation at Tab 18 at the U of O Watch article that you'll see at Tab 18 of your book of documents, sir, on the second page of this article, U of O watch list of "Allan Rock Lies, Deceptions, Evasions and Hypocrocies", he says the same thing essentially, as he says in Exhibit 3, and that's that there's a cover-up personally managed by President Allan Rock.

A. Tab 19.

MR. DEARDEN: Q. Or 19, sorry. Sorry. Thank you. What do you have to say about Mr. Rancourt's allegations that there was a high level cover-up orchestrated by Allan Rock himself to hide the fact that St. Lewis' efforts were anything but independent?

R. C'est tout à fait faux. C'est un mensonge et honté. Il aurait dû le savoir, c'est pas comme ça que ça fonctionne à l'université. Comment est-ce qu'on peut dire à un professeur quoi faire et dicter un professeur, surtout un professeur de droit. L'expression qu'on utilise à l'université, on l'utilise en anglais surtout « *herding cats, shovelling frogs*. » Chaque professeur de l'université est conscient et, et convaincu qu'il connaît beaucoup mieux que le recteur et que le vice-recteur comment l'université devrait être conduite. Alors, même l'idée qu'un, qu'un recteur ou qu'un professe - qu'un, qu'un vice-recteur puisse mettre sous le boisseau, je - cover-up là, ou forcer un professeur à, à, à dire autre chose que ce que le professeur veut dire, c'est tout à fait ridicule. Je trouve ça

scandaleux comme affirmation. C'est mensongé et c'est malveillant.

INTERPRETER: It's quite false. It's a bold face lie. It's not how we work at the university. How can you say to a professor what to do, to dictate to professors, especially a professor in law? The expression that we use at the university, we use it in English mostly, "herding cats, shovelling frogs." Each professor at the university is conscious, is convinced that he or she knows much better than the president or vice-president how the university should be run. Even the idea that a president or vice-president may - might be able to do a cover-up to force a professor to say other than what the professor wants to say, it's quite ridiculous. I find this scandalous as a comment. It's malicious and it's untrue.

Q. Mr. Major, thank you for being here and giving your testimony to the jury and to His Honour. That's all the questions I have.

R. Parfait. Merci.

INTERPRETER: Perfect, thank you.

LE TRIBUNAL : C'est bien, monsieur Major. Vous êtes libéré. Vous pouvez quitter.

INTERPRETER: Thank you, Mr. Major. You are free to leave.

R. Merci, Monsieur le juge.

INTERPRETER: Thank you, Your Honour.

MR. DEARDEN: Your Honour, would this be a good time to eat?

THE COURT: I think it's time to eat, yes. Okay. Until two o'clock.

MR. DEARDEN: Thank you, Your Honour.

...JURY EXITS

(12:52 p.m.)

R E C E S S

U P O N R E S U M I N G :

THE COURT: Are we ready for the jury?

MR. DEARDEN: Yes, sir.

THE COURT: Okay, bring the jury, please.

CLERK REGISTRAR: All rise.

...JURY ENTERS (2:03 p.m.)

CLERK REGISTRAR: All members of the jury are
present, Your Honour. You may be seated.

THE COURT: Next witness?

MR. DEARDEN: Your Honour, the next witness is Denis
Laberge.

DENIS LABERGE: AFFIRMED

EXAMINATION IN-CHIEF BY MR. DEARDEN:

Q. Good afternoon, Mr. Laberge. I'm just gonna
briefly highlight your education and work. You have a Bachelor of
Arts Degree in Sociology from Carleton University?

A. That's correct, yeah.

Q. And you worked with the Bank of Montreal in two
different roles, one manager of client services?

A. That's correct.

Q. And then you became a business analyst for Bank
of Montreal?

A. Excuse me?

Q. Then you became a business analyst...

A. That's correct. Yes.

Q. ...at the Bank of Montreal? Then you moved to
the Government of Canada?

A. Yes, indeed.

Q. And worked with Social Development Canada as a communications advisor?

A. That's correct, yes.

Q. And then from there, Service Canada?

A. That's correct, yeah.

Q. And first, when you went over to Service Canada, you were manager office [sic] for client satisfaction?

A. Yes.

Q. And then today, you're a senior analyst feedback management?

A. That's correct, yes.

Q. Okay. How many years have you known Professor St. Lewis?

A. I've known Joanne since 1995, July 1995. I met her sister just slightly previous to that and, and that's how I met Joanne.

Q. And you're her brother-in-law?

A. And, and, and I married Jacqueline, her sister, that's correct, yes.

Q. Okay. Now, prior to Mr. Rancourt publishing the two articles that he published that are in issue in this libel action, how many times did Joanne express a concern to you about her physical safety at work or at home?

A. None at all.

Q. And what concerns has she expressed to you about her safety since the publication of the articles in issue three years ago?

A. Well, the, the main concern that Joanne expressed was an individual who went in - went into her office and, and the dialogue or issue that, that resulted from that startled her and,

and soon thereafter, she - her office was moved to a more, you know, visible office space in - on the floor.

Q. Her office was moved? And do you recall what she told you about the dialogue and whether she knew the person that came into her office?

A. No. She, she did not. She...

Q. She did not what?

A. She did not know the individual.

Q. Okay.

A. And she expressed some, some concern or did, did mention that this person was mentioning Rancourt and, and that the conversation was, was rather, you know, was, was unsettling for her.

THE COURT: I'm sorry, I have a hard time understanding what you're saying.

A. Okay.

THE COURT: So, maybe the jury, also. So, make sure you pick up your voice.

A. Okay.

MR. DEARDEN: Q. So, you said that his person was mentioning Mr. Rancourt and Professor St. Lewis told you the conversation was unsettling?

A. That's correct. Yes.

Q. And since then, when you drive Professor St. Lewis home...

A. Mm-hmm.

Q. ...when she's over at your place, what do you do when you get to her...

A. Well...

Q. ...to Professor St. Lewis' home?

A. ...well, I, I just look out for her, for her, for

her well-being and her safety as a, as a, as her brother-in-law who, you know, cares for her quite deeply and I, I won't leave until I know that she's, she's in her house and that - so that's, you know, that, that's a big concern for me, that, you know, there could be some, you know, dangers kind of lurking in the bushes.
5 So, you know, there's a, there's a heightened concern there on my part, yes.

Q. And your observations of your sister-in-law the past three years, what impact has Mr. Rancourt's articles had on Joanne, including her interaction with you?

A. Well, in - Joanne's behaviour at times is, is up and down. She has - is since this whole issue has come, come to the forefront it, it's, it's, it's a big preoccupation for her. That's, that's clear and so her, her, her mood at times seems to be, you know, up and down, which I can only attribute to, to
15 what's going on in her life right now.

Q. And have you observed any changes in the way she interacts with you as a brother-in-law?

A. Well, you know, it - Joanne is a, is, is a very steady and very strong individual but, you know, it, it really takes away from, from some of the quality time that, that, that, that I have with her and that, and that her sister and my kids have with her, in that she's, she's preoccupied by this, this case, this, this issue, that, you know, a big part of her life right now.

Q. And did Professor St. Lewis tell you anything specifically about the impact that these articles were having on her?

A. Well, there's one instance where she described this, this, this whole, you know, issue, this whole situation and she described it metaphorically as which is, is kind of funny but,

but not, where she feels like she's been - she was essentially walking down the street, was hit by a truck, blindsided by a truck and then, and then the vehicle backed over on her and drove back and forth over her and it's been, it's been like that for, you know, so that, so that, that, that, that tells you, I think the, the extent to which, you know, this, this situation has impacted her.

Q. And from your observations in terms of, you know, physically, her tone of voice, that you're seeing and hearing, what...

A. Well, at, at, at times, she looks, she looks depressed. She - but, again, Joanne is a very strong individual and she picks herself up.

Q. Okay. Mr. Laberge, that's all the questions I have for you, thank you...

A. Thank you.

Q. ...for coming in.

A. Thanks. Thank you.

MR. DEARDEN: May he be excused?

LE TRIBUNAL : C'est bien, merci.

R. Merci.

THE COURT: You're free to go.

R. Merci. Merci.

MR. DEARDEN: Your Honour, I'll go find my next witness. It's outside.

THE COURT: Yeah.

MR. DEARDEN: The next witness, Your Honour, will be Jacqueline Beckles.

JACQUELINE YVETTE BECKLES: SWORN

EXAMINATION IN-CHIEF BY MR. DEARDEN:

Q. Good afternoon, Ms. Beckles.

A. Good afternoon.

5 Q. I'm just gonna briefly highlight your education and your work experience. You obtained a Bachelor of Arts from Concordia University in Poli Science, Political Science?

A. Yes, sir.

10 Q. And then you attended University of Ottawa's Law School and obtained a Bachelor of Common Law, your LLB, which was year 2002?

A. Yes, sir.

15 Q. And you got called to the bar with - by the Law Society of Upper Canada so you could practise law in this province in July of 2003?

A. Correct.

20 Q. And then you, as a practising lawyer in private practise, you were working for several years with a law firm, Langevin Morris and Smith...

A. Yes.

25 Q. ...here in Ottawa?

A. Yes, I was.

30 Q. And then you went to clerk at the Supreme Court of Barbados?

A. Yes.

Q. And that was like a one-year clerkship?

A. It was a one-year clerkship, yes.

Q. And then you went to teach at the Faculty of Law at the University of the West Indies? In that...

30 A. No, I wasn't teaching, actually. I was working the law library.

Q. Oh, okay. Which you found okay in the month of

February as opposed to being in Ottawa?

A. February in Barbados has its perks compared to Ottawa.

Q. Mm. And then you came back to Ottawa and worked with Health Canada and Correction Services Canada 2008, 2009?

5 A. Yes, sir.

Q. And then from 2009 to present, you've - you're working as a lawyer with the Department of Justice in the International Assistance Group?

10 A. Yes, that's right.

Q. And what does the International Assistance Group do?

A. We are the central authority for Canada for extradition and mutual legal assistance. Basically, what that means is where there are criminals who are in Canada and another country wants them, we are the ones who handle the requests for that and if there are Canadian fugitives who are abroad, we handle outgoing requests to other countries, as well. On the mutual legal assistance side, if there's evidence to be sought from other countries, we will be the ones to, to handle the request and, and farm those out to other countries and, and vice versa, so if other countries want evidence from Canada, we handle that as well.

20 Q. Okay. So, you're busy?

A. Yes.

25 Q. How many years have you known Professor St. Lewis?

A. We met in 1999 so, 15 years.

Q. And in what capacity did that meeting occur?

30 A. I was a student at the University of Ottawa at the time. I was in the civil law faculty. I did my civil law degree before I did common law. Professor St. Lewis was a professor on the common law side, but at the time, she was, I

believe, the only black professor there and our meeting was as a result of some issues that I was having with the - within the faculty with other students related to race and I sought her out for some guidance.

5 Q. So, did you take any courses from Professor St. Lewis?

A. No, I've never taken any of her courses.

Q. Okay. And how would you describe your relationship with Professor St. Lewis?

10 A. From our first meeting, we - it was professor/student, and although I've never taken her courses, she was always Professor St. Lewis to me, because she has developed and fostered a relationship with a lot of the students, especially minority students in the faculty, where she had an open door policy. We
15 could drop in, discuss any issues that we were having and oftentimes, just to chat and, you know, say, "Hi, how are you? What's up? What's going on in your life?" From that point, once I graduated, I continued my relationship with her on a more - it, it was still Professor St. Lewis, but it was more of a mentor
20 relationship because she is an indomitable woman. She is remarkable. So, a number of, of the female students, especially the female black students, took to her and, and she's always been a kind of auntie, as it were, to us so, we will seek her out and, and, and seek to be in her presence. Every year, she has a
25 mentorship function for the students coming in, in September, where she will invite alumni. So, every year, I will go to her house and, and be part of that. So, at this point, I would consider her a mentor and a very close friend.

30 Q. And you were awarded the Black Law Students' Association award in 1999?

A. Yes.

Q. And what is that award?

A. Essentially, it's a bursary that, that was arranged by the Black Law Students' Association. It was given to a black law student attending a faculty of law, so a black law student in financial need with high academic standing.

Q. And what involvement did Professor St. Lewis have with the Black Law Students' Association, when you were a member of that association?

A. She was the faculty advisor. She has been the faculty - or was at this point, she resigned last year - but was the faculty advisor since its inception. The organization is, at this point, I believe, 21, 22 years old and from the time that it was formed, Professor St. Lewis was involved. She is one of the few black law professors in Canada. So - and is the, the leading authority on critical race theory in Canada. So, it, it was apparent to the students that she should be involved with the organization and we should try to keep her involved as, as closely as we could. When I was the president of the Ottawa U chapter, she was definitely the person that I would seek out to find out who we needed to come and speak to us about the variety of, of issues in law and issues peripheral to law, so how to find jobs, how to apply for jobs, what kind of fit law firms were looking for. There were - there's a number of different issues that, that black law students would have in order to get jobs in the area and as well as, maybe, travelling abroad; issues related to, to any aspect of practising law within Ontario as well as outside of Ontario; things that students never even think of like the, the possibilities of working, for instance, in Barbados at the Supreme Court. Those are the kind of things that, that Joanne would know about and taught us about.

Q. Okay. The defendant in this libel action, Mr.

Rancourt, published two articles that are in issue in this libel action three years ago and can you describe how your relationship with Professor St. Lewis has been affected since the publication of those articles?

5 A. Well, our relationship has changed a little bit, I would say. Well, not the relationship itself, more the frequency that we will see one another. Joanne is always one of the busiest people I know and the most effective in terms of, you know, accomplishing goals and, and setting her objectives and, and
10 meeting those objectives. When the litigation started, Joanne was involved in a number of activities. She, she was a benchler, which is one of the senior members of the profession who oversees the legal profession at the Law Society of Upper Canada. She was teaching. She was the faculty advisor for the Black Law Students'
15 Association, among other student organizations. So, she was advising definitely more than the black law students. I believe there were four or five, at any given time. She has family. She, she's involved in art and music and she paints, she sings, she sculpts. She's got a, a diverse interest base and what I saw when
20 the litigation started and as it's been progressing is Joanne withdrawing and retreating into herself where she has stopped doing a lot of the things that bring her joy. She is focused on this litigation.

Q. Is she the same person?

25 A. She's sad. She is, I wouldn't say unhappy but she is, she is saddened by having to defend herself against something so heinous as, as the words that this person has spoken in this fashion, in this very public fashion. She's, she's, she has retreated into herself. She is not the public. She is very,
30 a, a very public person. She's a private person on one hand, but very public in that she's accessible to everybody. The same way

that I, as, as somebody who wasn't one of her students, the same way that I could go to Joanne no matter when. I could call her on the phone and, and tell her I was having a problem and Joanne would be there. She now had to relocate her office for fear of what people may just walk in and do to her or say to her. The location of her office was much like as you see the hallway outside. There's a bunch of doors in a row, people can come in off the street and just open the door and come in. That's where Joanne's office was throughout, throughout my education, which is how I met her, by just walking in off, off of campus and saying, "I need your help.", and she was there. Now, Joanne is behind a secure door. She is not accessible just to people who may need her help. You have to make an appointment in order to speak to her on the phone. Unless you have her private cell phone number, you have to call the faculty and leave a message and, and she has to screen her calls because of this, because of, because of Mr. Rancourt. My relationship, I'm glad it has grown to the point that it is, because now, I still have access to her. I can still call her and pick her brain and she's always available and willing to talk to me but I can't imagine how many students over the past three years have missed out on that experience and that, on its own, makes Joanne sad that she can't be the person who she wants to be. She cannot do the things that she wants to do because she's hamstrung by a person who, for whatever reason, has this, this hate on for her. This litigation is all that she talks about and the fact that it's in trial right now is almost a blessing because it - there's a light at the end of the tunnel. There's a finality. There's a conclusion. It's soon to be over and, and she can move on and her friends who support her can, can help her through and help her move on, but it's finally going to be over.

Q. And during the past three years, Ms. Beckles, did

you notice anything physically and emotionally about Professor St. Lewis that Mr. Rancourt's articles and the conduct of his defence have had on her the past couple of years?

5 A. Joanne is strong. She is very, very strong and that strength and, and almost a defiance, almost a wilfulness is what is carrying her through, at this point, in my mind, because it - this - the stress of, of, of the litigation over the past three years would've, would've felled any number of people. They wouldn't be able to withstand all of the constant attacks and all
10 of the, the, the different areas that she's had to deal with. You know, the, the Champerty motion and, and the, the variety of different motions that have been brought, it's completely frivolent [sic] motions to my mind, but the fact that Joanne is even able to relate and talk to people and give any time
15 whatsoever to people speaks to her strength but she has been sick. She has had to take leave of absence from, from the university, at one point. She has had to withdraw from a number of things that I know she loves and....

Q. Like what?

20 A. Like, like, painting, like, singing, like, like, speaking engagements. It, it seems to me that Joanne is not as involved in the Ottawa community as much as she used to be. She will attend engagements but she will not participate as a speaker or as a, as a conference presenter anymore because she - I feel
25 that she doesn't wanna put herself out there in that way anymore to allow for people to attack her on any level unless it is something that she is absolutely passionate about and she's starting to do that again, but for - I wouldn't say the full three years, but definitely in the last two, she has withdrawn and will
30 take speaking engagements, if they are out of Ottawa and that's when I've seen her be the happiest when she's not in Ottawa, when

she's travelling. And then she will speak about her travels and, and what she has done and, and the fun she's having but when she's in Ottawa, she's not happy.

Q. So, this is you're observing - she's telling you about these out of town engagements and you're observing behaviour different and more positive than when...

A. Than when she's home.

Q. ...she's in town?

A. Yes.

Q. Ms. Beckles, those are all the questions I have. Thanks for coming.

A. Thank you.

THE COURT: Thank you. You may go now. Thank you very much.

MR. DEARDEN: I'm gonna get my next witness, Your Honour. I'm not...

THE COURT: Yes, please.

MR. DEARDEN: ...leaving you. Your Honour, the next witness is Bruce Feldthusen, the former dean of the law school.

BRUCE FELDTHUSEN: AFFIRMED

MR. DEARDEN: And Your Honour, I have a Book of Exhibits of Mr. Feldthusen, which I would like to introduce as the next exhibit, please.

CLERK REGISTRAR: Exhibit Number 22.

THE COURT: Twenty-two?

CLERK REGISTRAR: Twenty-two.

THE COURT: Exhibit 22.

EXHIBIT NUMBER 22: Book of Exhibits of Bruce Feldthusen - produced and marked.

EXAMINATION IN-CHIEF BY MR. DEARDEN:

Q. Good afternoon, Mr. Feldthusen.

A. Good afternoon, Mr. Dearden.

5 Q. I'm going to briefly take you through your education and work experience, your employment. You have a Bachelor Arts from Queens?

A. Yes, I do - excuse me. Yes, I do.

Q. It's okay. And then your law degree from University from Western?

10 A. Yes, it is.

Q. And Masters of Law Degree from the University of Michigan?

A. Yes.

Q. And Ph.D. in Law from University of Michigan, as well?

15 A. Yes.

Q. And you were called to the bar of the Law Society of Upper Canada to practise law in Ontario in 1979?

A. Yes.

20 Q. And from 1977 to '99, you were a professor of law at the University of Western's Faculty of Law?

A. That's correct.

Q. And you received tenure as a law prof in 1981?

A. That's correct.

25 Q. And then you came to the University of Ottawa as the Dean of the Faculty of Law, Common Law section in the year 2000?

A. That's correct.

Q. And you were dean for 14 years?

30 A. Yes.

Q. And today, you're just a prof?

A. Just a prof.

Q. And you've also served as a litigation consultant to matters before the Supreme Court of Canada?

A. Yes, sir.

5 Q. And you have a number of publications that I'm not gonna take you through, but they're in Tab 1 of your curriculum vitae. You co-authored a book on Canadian Torte Law, which is in its eighth edition today?

A. That's right.

10 Q. And you also co-authored a different version of Canadian Torte Law where it was cases, notes and materials that the students would use and it's in its thirteenth edition today?

A. Fourteenth.

Q. Fourteenth? And you've written numerous law review articles that are set out in your curriculum vitae?

15 A. Yes, sir.

Q. And in terms of academic and professional organizations, you chaired the Canadian Council of Law Deans in 2004, 2005?

A. I did.

20 Q. And you were also a member of the American Law Institute?

A. Yes, I am.

Q. And what is the American Law Institute?

25 A. It's an invitation only organization consisting mostly of United States trial lawyers and judges but also a handful of people from other countries who work together on legal education for the profession. They produce statements of the law to assist the court and they produce best practice instruction and that sort of thing.

30 Q. And how many members were from Canada?

A. When, when I joined, there were three or four. I think there are maybe twenty now.

Q. And how long have you known Professor St. Lewis?

A. Since I came here in January 2000.

Q. And as the dean, did you ever call on Professor St. Lewis to assist you on matters arising at the law school?

5 A. Yes, I did. She has particular expertise in matters involving discrimination on various grounds and these things come to the, the forefront from time to time in a, in a law school. Sometimes among students, themselves, sometimes student/professor and so on and she had not only expertise but a,
10 a good knack at diffusing tense situations.

Q. And that would be something that you would seek out Professor St. Lewis' assistance on?

A. I think, I think everyone just knows that that's a smart way to, to deal with a problem that's probably too
15 volatile for most of us. It's a, it's a role she plays.

Q. And when did Professor St. Lewis get granted tenure?

A. 2001.

Q. And I'd ask you to turn to Tab 2 of your Book of Exhibits. You sent that letter to Professor St. Lewis October 3rd,
20 2001 informing her that she received tenure?

A. I did.

Q. And during the past 14 years that you have interacted with Professor St. Lewis as dean and now as law prof,
25 what is her standing in the law school community?

A. Well, she's known best, as I said, as, as a, an expert in anti-discrimination, not only race, certainly also I've had occasion to work with her on disability to, to great effect. She has teaching expertise in, in that area also, among others,
30 but those would be her, her specialities. I wanna be fair to her. She's, she does interesting work of different sorts. She's done national security research too, and so on, but what - I think when

we think of, of her, we think of her as one of legal education's leading experts in anti-discrimination matters, law and procedure.

Q. Now, could you turn to Tab 3, please...

A. Yes...

Q. ...Mr. Feldthusen?

A. ...I have it.

Q. On November 18, 2008, Professor St. Lewis sends you a copy of her final evaluation report of the SAC 2008 annual report and you send an email to Professor St. Lewis November 19th saying, "This is an extraordinary piece of work. Good for you." And why did you say that Professor St. Lewis' evaluation report was an extraordinary piece of work?

A. Well, the, the, the contents really, more than anything, although I would say she was in a difficult position, perhaps, doing this work. It was obviously not going to, to please everybody but I thought the contents - we have a lot of difficulty at the university and, and while it annoys the administration, it's, it's worse for the students when they don't understand the rules about what is and is not appealable or they, they think that they can come and say, "Well, I know I didn't attribute this material in my essay, but I didn't mean to fool anybody.", or you know, so one of the, the good parts of, of this report is it spells out those common misunderstandings for students and given that, in my opinion, the, the report that the students had done actually repeated these misunderstandings, I thought it was especially important that she documented them in that report. So, that was one thing. The, I guess, tangential to that, I mean, if the students lose faith in the appeal procedure and they just don't go, things are gonna be worse for them. So, I think it was pretty important to address the integrity of, of the system but I think the thing that impressed me most is the, the report that the Student Appeal Centre had issued came out with a

lot of language about systemic racism, which is a very inflammatory and difficult and important topic and notwithstanding all the criticisms that Professor St. Lewis made of the methodology and so on, she didn't say there's no problem. She said this has to be researched properly. Okay? We need to get accurate data on, on this and so on and so on. I thought her, her conclusion was, was, was the best part.

Q. And at Tab 4, you sent another email to Professor St. Lewis on November 26th, 2008 indicating that you thought the press in the Citizen was excellent. "You've done a great service to the university and especially to the students." So, why are you of the view that Professor St. Lewis did a great service, especially to the students?

A. Well, in, in answering you, I'd just be expanding on, on what I'd said. That, I mean, the students have legal rights and they have to understand them, otherwise, they don't help them and if they're misled about them and inflamed so that they, they don't even use their legal rights, the students are the losers. I think if the students understand what those rules are, first of all, they can follow them and get the outcome that, that's possible or they can criticize them, but you can't, you can't criticize something that you don't understand. So, either way, I thought it was of educational benefit to the students.

Q. And Tab 5, you're cc'd on an email that Professor St. Lewis sent to Robert Major and to Allan Rock and others, SAC report follow-up and it's dealing with an appointment she received from the university in March 16, 2009 to review the university's academic fraud appeals process and why are you cc'd on this?

A. Well, in part, it's, it's a courtesy I think and in, in part, the way, the way the university operates is that a, a professor works for the unit, so for, for the law school and this is a pretty time-consuming enterprise that's out, outlined here

and this means that, that Professor St. Lewis, if she undertakes this, is going to be either greatly over-burdened or gonna have to give up something in, in the law school and I suppose the university could make me release her but in, in a courteous environment, it's, it just, she lets me know and I say terrific and we talk about the implications for her work load in the, in the law school.

Q. And during the time you've been dean and law prof the past 14 years, what are your observations of Professor St. Lewis' relationship with the law students?

A. It's, it's unusual because it's, it's completely professional but it's, at the same time, she enjoys a, a degree of trust, I would say, particularly from students that come from minority communities. So, she has a, a relationship, which is not part of her formal duties, which I think she undertakes as a responsibility and she is trusted by the, the students, so when there are problems coming up that have a, a dimension of particular concern to those groups, she's able to analyze it. If she thinks it's something that the dean or her colleagues can solve, she's able to bring it to them. If, if she thinks that the, the dean or the professors are, are the problem, she's willing to say so. So, she's a mentor certainly to a - and - these particular groups of, of students and to a degree that, that I've seldom seen. I've had more than one student of colour say to me that they picked our law school because she was a professor here.

Q. When do you recall that Professor St. Lewis came to you to tell you that she discovered that somebody had referred to her as acting as Allan Rock's house Negro?

A. It was April 11th, 2011.

Q. And what did you observe the impact was on Professor St. Lewis when she came to you to tell you that she had

discovered that somebody had referred to her as acting as Allan Rock's house Negro?

A. It was a, a, a very emotional meeting. She was extremely upset but, but not, not in any simple way. I mean, she was angry and, and, but she was wounded, she was hurt and she was determined to, to address it. I think maybe she was overwhelmed by it. It was, it was an overwhelming meeting.

Q. And your reaction when you learned that one of your professors was referred to acting as a house Negro to the president of the university?

A. Well, I was utterly stunned. I couldn't, couldn't believe it and I also, it was evident to me and I, I could have predicted how upsetting is almost an understatement this would be for Professor St. Lewis because it was - maybe I should go back. She, she told me that she discovered this text on Google. I'm, I'm not sure she'd actually read the text. She was Googling herself and reference to her being so described, she described it as coming all over the computer when, when she went on Google. It was, it was horrific. So I, I was, I was both, you know, experiencing vicariously just, just a little bit of how she must have felt but also, I mean, I've, I've never heard of anybody speaking to a colleague like that before or since.

Q. So, what did you say to Professor St. Lewis when she's come to you April 11th of 2008 [sic]. She's made this discovery. What did you say to her?

A. Well, I'm sure I, I tried to communicate my, my understanding of, of how she was taking this and I, I think then we, we also discussed what she was going to do about it and I was interested in knowing what the law school or the university could do to help. So, in addition to discussing the phenomena, we talked about how, how to stop it and - so most of our discussion of that sort would have focused on the law of defamation because

that's really what we were talking about with this Google flash. It's just this, you know, impact on her reputation. I mean, it's, it's, it's global but it's, it's out there and it was overwhelming, so that seemed to be the logical way to, to go and we, we tossed around the names of a few people in town that we knew do that kind of work and I think it's probably me that said that we have to go see the president.

Q. Allan Rock?

A. Allan Rock, yes.

Q. And who set up the appointment to meet with President Rock?

A. My administrative assistant, Mrs. Chung, set it up with someone in the president's office.

Q. And is that what I see at Tab 6?

A. Yes. Danny Chung is my assistant, who was.

Q. And that was set up for Friday, April 15th of 2011?

A. Correct.

Q. And that meeting occurred with President Rock, you and Professor St. Lewis. What were your observations of the impact that Mr. Rancourt's referring to her as a house Negro had when she was conveying that to - or at the meeting?

A. It, it was similar to how she conveyed it to me. They - she was just as engaged in all, all the ways I said, like, upset and wounded and hurt and angry and determined to, not to let this destroy her.

Q. Now, after Professor St. Lewis sued Mr. Rancourt, her office at the law school got relocated from the third floor down to the first floor near your office. Why did that relocation of offices occur?

A. The third floor office is located in a, a very vulnerable place in the, in the building. Our building is, is

generally open with, except for a few areas, 24 hours a day to anyone off, off the street but Professor St. Lewis had a particularly vulnerable office, 'cause she was on a, a catwalk and there was a, a, a public hallway that ran right down. So, 24
5 hours a day, people could be going from our building to the library or to other buildings along this corridor, so it was a very exposed area and Professor St. Lewis came to me and told me that a, a person, I don't know if the person was a student or not, but a person had come into her office uninvited and, and had in
10 some way connected him or herself to Professor Rancourt and had scared her. And the, I mean, I took that seriously and clearly, she, she did, too. So, it, it was relatively easy to move her office to an office in the part of the law school where the doors are locked automatically at five o'clock. I should say, Professor
15 St. Lewis teaches night classes and is a night owl so, you know, most of the time that she'd be working in her office, she'd be either with lots of people around her during the daytime or behind automatic locking system in the evening.

Q. And whose decision was it to move Professor St.
20 Lewis' office next to your office?

A. You know, honestly I don't remember. I mean, I think I, I wouldn't have said you must move and I, I doubt, I, I just don't remember. It was mutual there and I was happy to do it. She, she wanted more security. I'd say it seemed to be a
25 solution that suited everybody.

Q. Okay. And was there anything else you did in reaction to this incident where this person comes in uninvited and scared Professor St. Lewis?

A. Yes. Professor St. Lewis was worried that this
30 was going to repeat and, as I say, our building's totally open, so you, anybody can come in any time. So, she had made on her own, I believe, arrangements with her teaching assistant to keep, keep an

eye out and for strangers in the classroom and to notify protection services, if necessary and she wanted me to speak to her, her evening class, in particular. She had a class, a large class, from seven till ten at night and just to, to say in a, in a non-threatening way that if anyone or anything unusual came to their attention in the classroom just to speak to the, the TA. And I, I did that.

Q. Did you agree with that?

A. The - I certainly agreed that her concern was legitimate. I mean, who knows what the best way is to handle something like that, but I, I didn't have any doubt that the concern was legitimate. I think I also asked Protection Services to keep a special watch.

Q. What's Protection Services?

A. Sorry, that's the university police force, I guess, or security service.

Q. So, the university Protection Services?

A. Yes.

Q. You asked? You asked Protective Services?

A. I did. I, I did, yeah.

Q. And since the date of these publications by Mr. Rancourt three years ago, what request has Professor St. Lewis made with respect to her teaching workload?

A. In the fall of 2012, we discussed - and I'm not sure it was a formal request or if we just had a, a conversation about the fact and it was quite evident - her office ended up being next to mine, so I would see Professor St. Lewis, you know, quite often and it was evident that she was under a great deal of stress and, and in discussing that, whether I proposed or she asked for, I don't remember, that she take a, a, a what we call a reduced load. In other words, if she were assigned to teach two courses that semester, which I think was the case, that she drop

one and just take the work down, load down a little but I'm not saying, 'cause I just don't remember, whether she asked for that specifically or I offered it specifically. It was, it was the - an easy thing to, to do, in either event.

5 Q. And were there any other times in this three-year period where there was reduced work load?

A. In February, 2013, we have a, an odd teaching schedule, so we have a semester that begins about February 1st and Professor St. Lewis was that year teaching the, the, that
10 semester's part of a course that I taught from the first semester and after a few weeks in, it was evident to me that she was having a lot of trouble coping with the, the stress and so on, and I think I probably offered this time to say, 'cause it wasn't difficult for me. I knew that course, I'd be happy - I mean, knew
15 the students, that I'd just be happy to, to finish that one for her so I did.

Q. And what course was it?

A. That was a tortes course.

Q. Tortes? And since the date of Mr. Rancourt's
20 publications has - or what requests has Professor St. Lewis made for medical leave?

A. The, the way, the way that happens is that the professor goes to the Human Resources people at the central administration and everything is handled there, including medical
25 documentation and so on and I just get, as dean, a notice that, in this case, Professor St. Lewis would be on medical leave from, I think it was March till July 2013.

Q. Okay. Dean Feldthusen, that's all my questions. Thank you for coming in.

30 THE COURT: Thank you, sir. You may - you're free to go.

A. Thank you, Your Honour.

MR. DEARDEN: Your Honour, I actually fit in today one of the witnesses that were supposed to testify tomorrow, but I don't have anybody else lined up, so tomorrow, we have...

5 THE COURT: So, who - we have - so, yeah, there was...

MR. DEARDEN: Three witnesses.

10 THE COURT: ...Mr. Laberge, yeah, was scheduled for tomorrow. So, now you have four witnesses, three witnesses...

MR. DEARDEN: Three.

THE COURT: ...and the read-ins.

MR. DEARDEN: Yes, so I think we're done by one o'clock tomorrow, Your Honour, for...

15 THE COURT: Possibly I can tell the members of the jury, at one point in time, plaintiff's counsel will ask and will be allowed to read in certain question and answers that were asked and answered at a - what is called an examination for discovery. In all, or
20 practically all civil matters, civil trials or civil actions, each party is entitled to question the other party on the issues involved in the trial and either party may then read in what the other party said as part of his or her own evidence. So, that's what -
25 one of the things that's going to happen tomorrow. So, what will happen is that counsel will refer to the transcript of that discovery and simply read in questions and answers and the answers given by Mr. Rancourt, and that will then be part of the evidence
30 that you will be able to consider in coming to your final verdict. All right? So, we'll then resume tomorrow at ten o'clock then.

MR. DEARDEN: Thanks, Your Honour.

THE COURT: Thank you.

...JURY EXITS

(3:00 p.m.)

MR. DEARDEN: Your Honour, can I just...

THE COURT: This is the order for the transcripts.

I've signed it, so you can give it...

MR. DEARDEN: Well, thank you, Your Honour.

THE COURT: Yes.

MR. DEARDEN: Your Honour, can I just hand up to you

a - it - a summary of admissions that I've prepared that I'd like this document to be entered as an exhibit, but I'll let you consider it overnight.

I've set out the admissions that Mr. Rancourt's made in his statement of defence, the admissions he made at the pre-trial conference that are in the report and then his response to my request to admit, I've listed his admissions.

THE COURT: Well, you'll have to file the request and the response for the relevant portions or I'll have to see them or something.

MR. DEARDEN: Yeah. And that would be the summary. You see, I did something like four volumes, I think I'm recalling, of - and attached the documents that I wanted him to admit. A lot of the answers were, "This is a trick question." Or...

THE COURT: Yes. No, no, I understand that.

MR. DEARDEN: ...that kind of thing, so I could...

THE COURT: But they have to be clearly either admitted or if not answered, obviously, the rule provides for but...

MR. DEARDEN: So, we'll put that together for you, Your Honour. My...

5 THE COURT: So, I can, yeah, take a look at it. I don't need to see everything, but at least where there is an admission or where he fails to answer or something, yeah, but I'll leave that with you but I'll need something to ensure that it's all proper, yes.

MR. DEARDEN: Yeah. I'll do that tomorrow morning, thanks.

10 THE COURT: I'll take it with me...

VOIX DE LA SALLE : Monsieur le juge, est-ce que je peux approcher?

INTERPRETER: Your Honour, if I may address the Court?

15 LE TRIBUNAL : Si c'est pour me demander pour témoigner, vous...

THE COURT: If it's to ask me to testify...

MR. DEARDEN: I don't have a translation.

UNIDENTIFIED FEMALE VOICE FROM BODY OF COURT: I will speak in English.

20 MR. DEARDEN: Thank you.

UNIDENTIFIED FEMALE VOICE FROM BODY OF COURT: Your Honour, I am a, as I said, I am a philosopher of language and a, a studier of linguistic communities and a linguist and I specialize in derogatory
25 language. That's my area of expertise...

THE COURT: Okay.

UNIDENTIFIED FEMALE VOICE FROM BODY OF COURT: ...or one of them.

30 THE COURT: But what's the purpose of your intervention?

UNIDENTIFIED FEMALE VOICE FROM BODY OF COURT: The purpose of my intervention is that I'm interested in

how the law interacts with these questions that I'm an expert on and I seek your direction in terms of what I may or may not write professionally about what I'm observing.

THE COURT: You, as soon as the trial's over, you can write whatever you want.

UNIDENTIFIED FEMALE VOICE FROM BODY OF COURT: As soon as the trial's over, I can write whatever I want?

THE COURT: Yes.

UNIDENTIFIED FEMALE VOICE FROM BODY OF COURT: Okay, thank you very much.

THE COURT: Make sure it's not libelous but you can write anything that is not libelous.

UNIDENTIFIED FEMALE VOICE FROM BODY OF COURT: I, I, I would not want to fall in the way of Mr. Dearden...

THE COURT: No, don't...

UNIDENTIFIED FEMALE VOICE FROM BODY OF COURT: ...in being, in that...

THE COURT: Don't get caught...

UNIDENTIFIED FEMALE VOICE FROM BODY OF COURT: ...accused of defaming anybody.

THE COURT: Yeah, and don't get caught in a problem.

UNIDENTIFIED FEMALE VOICE FROM BODY OF COURT: Yeah, okay, fine. Thank you very much.

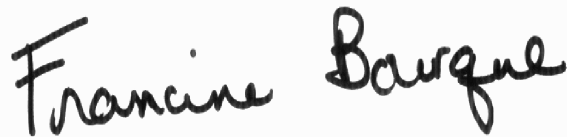
...WHEREUPON THESE PROCEEDINGS WERE ADJOURNED

101.
Certification

FORM 2

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February 4, 2015

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SUPERIOR COURT OF JUSTICE

B E T W E E N :

JOANNE ST. LEWIS

Plaintiff

and

DENIS RANCOURT

Defendant

P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE JUSTICE M. CHARBONNEAU
on MAY 22, 2014, at OTTAWA, Ontario

APPEARANCES:

R. Dearden

Counsel for the Plaintiff

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SUPERIOR COURT OF JUSTICE

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Legend

[sic] - Indicates preceding word has been reproduced verbatim and is not a transcription error.
(ph) - Indicates preceding word has been spelled phonetically.

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Transcript Ordered:	June 28, 2014
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1.
Joanne St. Lewis v. Denis Rancourt
Sileen St. Lewis - in-Ch.

THURSDAY, MAY 22, 2014

THE COURT: Good morning.

MR. DEARDEN: Good morning, Your Honour.

THE COURT: Ready for the jury?

MR. DEARDEN: Ready for the jury.

THE COURT: Bring the jury.

CLERK REGISTRAR: Order, all rise.

...JURY ENTERS (10:03 a.m.)

CLERK REGISTRAR: All members of the jury are
present, Your Honour. You may be seated.

THE COURT: Good morning. All right, let's
proceed.

MR. DEARDEN: Your Honour, my next witness is
Sileen St. Lewis.

SILEEN ST. LEWIS: SWORN

EXAMINATION IN-CHIEF BY MR. DEARDEN:

Q. Good morning, Mrs. St. Lewis.

A. Good morning, Mr. Dearden.

Q. You are Joanne's mother?

A. Yes, I am.

Q. And by profession, you're a registered nurse?

A. Yes.

Q. And your husband, Victor, was a school
teacher and a principal?

A. Yes, sir.

Q. And you moved from Trinidad to Montreal and
that is where your daughter, Joanne, was born?

A. Yes.

Q. And she is your first born of three children?

A. Yes, sir.

Q. And you lived in Montreal for about 10 years
and then you moved to the metropolis of Pembroke?

A. Pembroke, yes, sir.

5 Q. Which is about what? Two hours drive from
Ottawa?

A. Yes, sir.

Q. And how long did you live in Pembroke?

A. Thirty-five years.

10 Q. Thirty-five years? And where did you work in
Pembroke?

A. At, at the Pembroke Civil Hospital as a
registered nurse.

Q. Okay, and your husband?

15 A. He - high school math teacher at Champlain
High and Fellows High.

Q. And did your daughters go to Champlain High?

A. No. Joanne, she went to Our Lady's High,
which is a Catholic school and then to Champlain.

Q. In Pembroke?

20 A. In Pembroke.

Q. Okay. How would you describe your
relationship with your daughter, Joanne?

A. My relationship with my daughter, it's very
close, loving relationship.

25 Q. You spend a lot of time with her the last
three years?

A. Well, not as much as, as previously.

Q. Why is that?

30 A. I, for the past three years, she was always
very tired and, and at times even seemed irritable and she was
not, I would say, motivated to go out as much as she did

previously.

Q. And as you know, Mrs. St. Lewis, three years ago, your daughter, Joanne, sued a man named Denis Rancourt for publishing two articles about her.

5 A. Yes.

Q. And during the past three years, can you tell the jury what changes you've observed in your daughter since he published these articles about her?

10 A. Well, for at least the past two years, I found her a bit irritable, short tempered. Less time, she had less time to spend with me. Even the - at - in one case, I asked her, I was asking her to help me with something and she mentioned, "Well, you have two other children." And that is not like her. She's always been very protective and she's,
15 especially since her father passed, she has really taken care of me and has been always there for me and I noticed that she wasn't having that, that inclination any more.

Q. And what do you - what is your belief is the cause of that?

20 A. Pardon?

Q. What do you think is the reason why there's...

A. Well...

Q. ...this change in your daughter?

25 A. ...because this problem has been absorb - absorbing most of her time and mentally, even for herself, she, she just loved being with people and loved being with, with family, but even when she visited sometimes, she would just sit by herself because she was either so tired and - but
30 just didn't want to interact with - a bit with us.

Q. And would you the off include grandchildren?

A. Oh, as for the grandchildren, she just -
previously, she would be on the floor with the children,
playing with the children, et cetera. Now, she, you know, for
a short time, she would, but not as much. She didn't have the
5 enthusiasm that she had previously.

Q. And have you noticed anything, any change in
her health?

A. Change in her?

Q. Health?

10 A. Oh, yes, I don't know, just some change. She
mightn't like it but she's putting weight on. She isn't, she
isn't doing her exercises. She usually goes to the gym a
couple of times a week. She hasn't been doing that. Eating
properly, usually, she prepares her, her meals for the week,
15 et cetera, and I have checked with her and all these things,
she just, she just goes out and buy prepared foods. You know,
she isn't taking time to take care of herself.

Q. And what about her sleep? Her sleep?

A. As far as I know, I don't think she's
20 sleeping properly because, usually, she plays on the computer
with her friends. This is the only way, she doesn't live with
me, so - but from this, I can tell she's up during the night,
because the response that her response comes in way, one, two
o'clock, three o'clock in the morning. So, she has to be up
25 at that time and usually, previously, it was never that late.

Q. I don't know words in French, so this is
something you guys play. Computer, well, a computer app of
some sort? Is it like a Scrabble?

A. Yes, yes, it's a, it's a Scrabble game. And
30 usually, we have about eight or nine games going, so...

Q. And you're receiving her play, if I can say

that, 'cause I don't know the game, but you receive - you get her play response sometimes one, two or 3:00 a.m.?

A. So, it tells me that she's awake at that time.

5 Q. Okay, last question, Ms. St. Lewis. Who wins?

A. Of course, she wins all the time.

Q. Okay, you don't have to answer. You don't have to answer that.

10 A. No problems. Most of the time.

Q. Okay.

MR. DEARDEN: Your Honour, those are all my questions for Mrs. St. Lewis.

15 THE COURT: Mrs. St. Lewis, you are free to go then. Thank you very much for coming.

A. Oh, you're very welcome.

MR. DEARDEN: Your Honour, I'll get my next witness.

20 THE COURT: All right.

SARON GEBRESELLASSI: SWORN

25 MR. DEARDEN: Your Honour, I have a small Book of Exhibits for Ms. Gebresellassi. I'm going to enter as the next exhibit, please?

CLERK REGISTRAR: Exhibit Number 23.

THE COURT: Twenty-three. Thank you.

EXHIBIT NUMBER 23: Book of Exhibits of Saron Gebresellassi - produced and marked.

EXAMINATION IN-CHIEF BY MR. DEARDEN:

Q. Good morning.

A. Good morning.

5 Q. I'm just gonna briefly review your education
and work experience, Ms. Gebresellassi. You attended Ryerson
University and got a B.A. in Radio and Television Arts?

A. Yes.

Q. And then you attended University of Toronto
to get a Masters of Education Degree?

10 A. Yes.

Q. And but...

MR. DEARDEN: It's in Tab 1, Your Honour, the
curriculum vitae that I'm reviewing.

15 Q. And 2009 to 2010, you were a Ph.D. candidate
at York University?

A. Yes.

Q. And then you came to the University of Ottawa
Law School and obtained your law degree in 2013?

A. Yes.

20 Q. And I'm reading here that you only won 40
scholarships?

A. That's correct.

Q. What is the 2011 Black Pearls Award?

25 A. That's an award that's given by the Black
Pearls Association, which is based in Toronto that recognizes
women who are active in the community and engaged socially and
politically to advance the interests of women.

Q. Okay. And you were selected by Chatelaine
Magazine as one of the top 80 amazing Canadian women to watch?

30 A. Yes.

Q. And you also received in 2008, I'm looking at

your second page of your resumé, the African Canadian Women's Achievement Award?

A. Yes.

5 Q. And also, at the top of that page, you received the YWCA Young Woman of Distinction Award?

A. Yes.

Q. And in terms of work experience, you were a summer law student with an Ottawa law firm between first and second year?

10 A. After the first year of law school, I summered in Ottawa.

Q. Between - after you finished first year and before you went into second?

A. Yes, that's correct.

15 Q. And then, you summered again after you finished second year and before third year with a Toronto law firm?

A. Yes.

20 Q. And then you articulated as, which is a year of apprenticeship, if you will...

A. Yeah.

Q. ...before the Law Society will say that they're calling you to the bar and licensing you to practise law, correct?

25 A. That's correct.

Q. And you're going to be called to the bar this September?

A. Yes, that's correct.

30 Q. Congratulations on that.

A. Thank you.

Q. How long have you known Professor St. Lewis?

A. I've known Professor St. Lewis since my first year of law school. She was on sabbatical during the first term and I had come to know Professor St. Lewis in 20-11 when she had returned from sabbatical.

5 Q. Okay. So, what was your first year, 2010, 2011?

A. That's correct.

Q. Yeah, okay. First year. So, did you take a law course from Professor St. Lewis?

10 A. I did. I studied administrative law in - with Professor St. Lewis in 20-11.

Q. And any other courses?

A. No.

15 Q. Okay. And what interactions did you have as a law student at University of Ottawa with Professor St. Lewis, other than that administrative law course that she taught you?

20 A. I was - I worked with Professor St. Lewis a lot in my capacity as the National Conference Chair for The Black Law Students' Association of Canada and as well as my - in my capacity as a member of the executive of the Ottawa Chapter of the Black Law Students' Association. So, she was our National Faculty Advisor for the National Branch from, over 20 years and while I was sitting on the executive, she
25 provided a great deal of advice and support, mentorship, strategic advice, logistical support, moral support. That kind of thing.

30 Q. Okay. And you said with the Black Law Students' Association of Canada, you were a National Conference Chair of that organization?

A. Yes, I was, I served as a National Conference

Chair for two years in my second year of law school, as well as in my third year of law school, and I had been active for a number of years prior to then, as well.

5 Q. Okay. And you were also on the executive of the Ottawa Law School Chapter of that association?

A. Yes. I was a member, an executive member. I was also a rank and file member, just meaning I was a general member that was very active during my entire time at the law school.

10 Q. Okay. Which is 2010 through to 2013?

A. Yes.

Q. Okay. And when did you first learn that Professor St. Lewis was suing Mr. Rancourt with respect to Exhibits 3 and 4 that we've entered? They're the two articles
15 in issue. One, February 11, 2011, "Did Professor Joanne St. Lewis Act as Allan Rock's house Negro?", and another one published May 18, 2011. So, when did you first learn Professor St. Lewis was suing the defendant?

20 A. I first learned that Professor St. Lewis was suing the defendant in the summer of 20-11, in June of 20-11, when I had come across the, the press coverage in the Ottawa Citizen.

Q. And is that what we see at Tab 2 of your Book of Exhibits?

25 A. Yes.

Q. And how did you come to learn that the Ottawa Citizen had done this - had published this June 25, 2011 article, "Fired U of O Physics Professor Sued for Libel by
30 Former Colleague"?

A. It was in - I imagine it was sent to me. There was an online buzz that was generating around that time

when it had been picked up by the press, so media articles were circulating via email. So, in all likelihood, it was a - probably a colleague that would have brought that to my attention.

5 Q. Electronically?

A. Yes.

Q. And what was your reaction when you read this article at Tab 2?

10 A. I reacted. I, I was stunned when I, when I read the article and I learned about the comments that were made and, and I emailed Professor St. Lewis to let her know that I stood in solidarity with her and that students stood in solidarity with her and let her know that we are here to provide support to her in whatever capacity she may need it.

15 Q. And just before I get you to give testimony about that, when you said, "read comments that were made", what are you referring to?

20 A. I'm referring to the comments that were published on U of O Watch on the blog, using inflammatory language to characterize Professor St. Lewis.

Q. Okay. So, you've now learned about this Ottawa Citizen article and what did you do after you read this article again?

25 A. Well, after I read the article, I emailed Professor St. Lewis to tell her that, that I was aware of what was taking place and to let her know that students are - will stand in unity with her and let her know that I - we're here to provide her with support in our capacity as a national organization of law students, as well as in an individual
30 capacity.

Q. And that's at Tab 3 of your Book of Exhibits,

the email you sent?

A. Yes, that's the email.

Q. And the last line, you say, "It goes without saying that students stand in solidarity with you in this matter and please let us know if we, at BLSAC, can offer tangible support, solidarity." So, BLSAC, Black Law Students' Association of Canada?

A. Yes.

Q. And when you say, "students stand in solidarity", who are you referring to?

A. I'm referring to black law students.

Q. And you sent this email that we see at Tab 3 and then Professor St. Lewis sent you the response that we see at the top of Tab 3?

A. Yes.

Q. And did the Black Law Students' Association provide tangible support to Professor St. Lewis?

A. We did, yes.

Q. And what was that?

A. We published a, a statement that was circulated nationally to our various chapters across Ontario and Canada indicating what our position was on the issue, shedding light on, on what had taken place and explaining what, what our role is in the, in this matter.

Q. Okay.

A. Sorry. Sorry.

Q. And I'll get to that in a second. And you're referring to Tab 4?

A. Yes.

Q. Which is a Black Law Students' Association public statement. And when was that sent out?

A. This was sent out not - in the 20-11, twenty - not too long after the summer of 20-11.

Q. Okay. The 20-11, 20-12, is that your school term, I take it?

5 A. That's the academic year, yes.

Q. Yeah, okay. So, going back to the email at Tab 3 where you say, "Let us know if we at BLSAC can offer tangible support.", did Professor St. Lewis ask you to do anything in support of her?

10 A. No.

Q. And to your knowledge, did she ask the association itself to do anything to support her?

A. No.

Q. Okay. And you yourself, what support for
15 Professor St. Lewis did you organize at the law school?

A. I, I launched the Black Square Campaign, which was a, a short-lived visual initiative where a number of our students and, and faculty members were wearing black squares to demonstrate symbolic support with Professor St.
20 Lewis in her case.

Q. And when did that Black Square Campaign occur?

A. That was in the fall of 20-11, once students had returned from their summer off to commence the subsequent
25 academic year at the faculty.

Q. So, were you yourself handing out black squares to students asking them to show support and to wear the black square?

A. I was, and other members of our Chapter of
30 the Black Law Students' Association were doing the same, as well. So, I did hand out squares individually.

Q. And how many students decided they were not gonna wear a black square?

A. Two students decided they would not wear a black square.

5 Q. And tell us about that.

A. Around, around that time, so I had - we had given out squares in our class in the Administrative Law class and in hallways and after classes in the library, and I had given two students, who were colleagues of mine and
10 classmates, offered them a square and provided context and explained what the square was for and, and what the intentions were behind it in terms of showing some - symbolically what the value of that was and why it took on metaphorical significance and, and two of them, they both didn't - denied
15 taking the square, denied taking the square and the reason for that was they both said that they weren't sure where they stood on, on the issue and, and indicated that they, they had read about what had taken place and perceived Professor St. Lewis to have acted in a manner that was not in the interest
20 of students and if I may just sort of narrate a little bit of what was said? Essentially, what, what they said was, you know, we're just not sure. It seems like it's possible that we were sold out, essentially. And, and so that's why they didn't take the squares.

25 Q. Okay. And going back to this Black Law Students' Association public statement at Tab 4, the second paragraph says, "Consequently, we take this opportunity to address publicly the statements made by Denis Rancourt, a former physics professor at the University of Ottawa, who on
30 his blog, U of O Watch, wrote that Faculty of Law, Professor Joanne St. Lewis, acted like a house Negro in response to her

assessment of a report done by the Student Appeal Centre in 2008 at the University of Ottawa." So, what position did the association take in this statement?

5 A. We condemned the actions of the defendant in the strongest possible terms. We indicate in our position that we, we take a strong stance against systemic racism, that we have a responsibility as students and as professionals to unequivocally oppose discriminatory actions of this nature. We also drew attention to the fact that Professor St. Lewis 10 had never stated that racism did not exist or was not a problem. Quite to the contrary, she had - her very first recommendation, in her report, called for an independent assessment into whether - to determine whether systemic racism played a part in the academic fraud process.

15 Q. Where are you looking in the statement?

A. I am looking at the fifth paragraph on the first page of the statement.

Q. Okay. The one Professor St. Lewis has never stated?

20 A. Yes. Yes, so that...

Q. Okay, go ahead.

A. Yeah, it states, "Professor St. Lewis has never stated that there is no racism at the University of Ottawa. The very first recommendation in her evaluation 25 report calls for an independent assessment to determine whether systemic racism plays any part in the academic fraud process. As we understand it, her point is that the SAC report is methodologically flawed and misses the opportunity to meaningfully address structural racism at the university. 30 As Professor St. Lewis asked in her first recommendation, we support the call for an independent assessment of the academic

fraud process to determine whether systemic racism plays any part and an account of what actions SAC has taken since its report was released."

5 Q. Okay. And other positions that you want to highlight?

A. Yes, I would like to highlight the, the last paragraph, as well, the second to last paragraph on the second page where we stated, "Students would benefit from an in-depth investigative process to lend credibility to any claim of
10 systemic racism. To declare that the only black female English Common Law professor acted like a house Negro for merely pointing this out is reprehensible and we condemn it in the strongest possible terms. Professor St. Lewis has been the strongest and longest standing mentor available to black
15 law students from Vancouver to Halifax, including here in the National Capital region, for over 20 years."

Q. And last question, to your knowledge, what involvement did Professor St. Lewis have in drafting this statement that we see at Tab 4?

20 A. Professor St. Lewis had no involvement in drafting the statements.

Q. Those are all my questions, thanks.

A. Thank you.

25 THE COURT: All right, thank you. You're free to go.

A. Thank you.

MR. DEARDEN: Your Honour, I'll go get my last witness, which is John Currie, and we do have a Book of Exhibits for Mr. Currie which I will
30 distribute before I go and get him.

JOHN CURRIE: AFFIRMED

MR. DEARDEN: So, can we enter the Book of Exhibits of John Currie as the next exhibit, Your Honour?

CLERK REGISTRAR: Exhibit Number 24.

THE COURT: Twenty-four.

EXHIBIT NUMBER 24: Book of Exhibits of John Currie - produced and marked.

EXAMINATION IN-CHIEF BY MR. DEARDEN:

Q. Good morning, Mr. Currie.

A. Good morning.

Q. You have a Bachelor of Science in Physics and Astronomy from the University of Toronto?

A. I do.

Q. And I have your CV at Tab 1 of your Book of Exhibits.

A. Yes.

Q. You obtained your Bachelor of Laws [sic] from the University of Ottawa's Law School...

A. Yes.

Q. ..in 1990?

A. That's correct.

Q. And you obtained a Masters of Law from the University of Cambridge in 1993?

A. That's right.

Q. And from 1990 to '91, you clerked for the Court of Appeal for Ontario...

A. Correct.

Q. ...down in Toronto?

A. Mm-hmm.

Q. That covers the whole province.

A. Yes.

Q. In 1992, you were called to the Bar of Ontario so you could practise law?

5 A. Yes.

Q. And you did indeed practise law at a private law firm from 1993 to 1997?

A. That's right.

10 Q. And then from 1997 to date, your career has been as a law professor at the University Of Ottawa Faculty Of Law?

A. That's correct.

Q. And today, you are Vice-Dean of the Common Law Section of the Faculty of Law?

15 A. Actually, in about a month's time. I'm taking on those responsibilities as of July 1st.

Q. This is why you look so relaxed. You haven't started that job.

A. I'm still in denial.

20 Q. Good luck with that.

A. Thank you.

Q. Okay. So, you're a law prof. You're about to be Vice-Dean. You're also on the Board of Governors of the University of Ottawa?

25 A. That's correct.

Q. And you are also a Senator of the Senate of the University of Ottawa?

A. That's correct.

30 Q. And you have acted as counsel at all levels of courts in this province, including the Supreme Court of Canada?

A. That's right.

Q. And you have also represented Canada before the United Nations and other international bodies, including the Criminal Tribunal for the Former Yugoslavia?

5 A. That is correct.

Q. And how long have you known Professor St. Lewis?

A. To the best of my recollection, we first met when I was or began working at the law school at the University of Ottawa as a junior part-time faculty member in 1991. At the time, Professor St. Lewis was the Director of the Faculty's Education Equity Program, its founding director.

Q. Director of Education?

A. The Education Equity Program.

15 Q. And what is that?

A. That was a program Professor St. Lewis would be able to perhaps better describe it, being the, the principle architect of the program but the essential purpose of the program was to foster an environment within the law school that would be conducive to diversifying both the makeup of the student body to represent the makeup of broader Ontario and Canadian society in terms of diversity, and to achieve the same result at the level of the faculty as well, so that it was a truly representative law school.

25 Q. Okay. So, you've known her over 20 years?

A. That's right.

Q. And how would you describe your relationship with Professor St. Lewis?

A. At two levels. Professionally, we are very close. We are close collaborators within the law school and maintain a close working relationship, both at the

administrative level and on pedagogical matters. We also are very close friends. We've formed a very close friendship. So, I would say that Professor St. Lewis is my closest friend amongst colleagues at the law school.

5 Q. Okay. And prior to Mr. Rancourt publishing Exhibits 3 and 4, which the Registrar will show you, this is the two articles in issue in this libel action.

A. Thank you.

10 Q. So, prior to February 11, 2011, what are your observations of Professor St. Lewis' relationship with faculty and with students at the law school?

A. Well, let's begin with faculty. Professor St. Lewis has always been known and regarded as a leader within the faculty. As I indicated, she was the chief
15 architect of our Education Equity Program and thereafter joined the faculty as a faculty member. In that capacity, she's continued to be an advocate, a fearless advocate, I would say, for the fight against systemic racism, against institutional forms of racism in favour of supporting the
20 diversification of the curriculum of the faculty makeup and of the student complement of the law school. So, she's known for all of these things and is looked to by colleagues and administrators alike, as a leader in that regard, is highly valued for her expertise in that regard. With respect to
25 students, Joanne plays - Professor St. Lewis, that is, plays a number of significant, important roles that are unique, I think, to her expertise in this area. She's a well-regarded law professor, of course, but her particular expertise, when it comes to systemic racism, is a rallying point for students
30 who are racialized within the law school. She plays a mentorship role with respect to many individual students and

student groups who identify as racialized. She plays a convening role, provides support and guidance to many of them, is often a sounding board when they encounter difficulties, whether institutional or otherwise. So, in general, she is the go to person, both at the faculty, for the faculty and amongst students when it comes to issues related to systemic racism and race relations generally.

Q. And based on your observations of Professor St. Lewis since you've known her since 1991, how would you describe her reputation for acting independently?

A. Well, I would say that of all of my colleagues, if, if in - if indeed any of my colleagues were to be asked who is the most independent minded of us all, it would likely be Professor St. Lewis who would be top of mind. She certainly is in my mind. She is, in fact, a fiercely independently minded person, often taking an unconventional approach or offering an unconventional or unexpected analysis on issues as they arise. She's known for that and she's valued for that. She is certainly not one that you can expect to toe the line and I say this not only with respect to persons or groups or viewpoints that might be considered to be different or at odds with her own. Even amongst her closest allies, closest friends, closest colleagues, she can be challenging. She is challenging. She challenges us all to go beyond what our current expectations, our current understandings happen to be. She's well known for this. She's well known for being not someone to toe anyone's line. In, in that connection, you can't think of a more improbable person to label with the words that I see in the exhibits before me. I'm referring to Exhibits 3 and 4.

Q. And at some point in April of 2011, Professor

St. Lewis came to see you, Professor Currie, about a Google search that she did on her name where she discovered that she was referred to as Allan Rock's house Negro and can you tell the jury what you discussed with Professor St. Lewis and
5 describe the impact that you observed this discovery had on her?

A. Yes, as I recall, she came to my office. She was in a highly agitated, highly distressed state. Her voice was trembling, which in itself is odd for Professor St. Lewis,
10 who is one of the most together, composed persons that I know, including when under duress or facing difficult circumstances. So, as I say, she was clearly distraught, trembling, her voice was catching. On occasion, it appeared to me that she was on the verge of tears. She related to me, as you've indicated,
15 that she had found a, a reference on a website or a blog to her name in connection with the words "house Negro." She indicated that she had not read the content of the blog itself or of the web posting itself and her request of me was essentially that I do so beforehand on her behalf, that I read
20 it and my sense was that she wished me to vet it and to provide her with a, a, a cushioned or a filtered or a contextualized description of what the content of the actual blog post was. As I say, during the entire discussion, she was highly emotional, highly upset. This, as, as I say, was
25 of concern to me, not only because I'm a close friend, but because it is so absolutely unlike Joanne or Professor St. Lewis, to be in that kind of state. Clearly, it had an impact on her and I remember thinking at the time that it looked as though she had come from a physical bullying incident of some
30 sort. She did not suggest, of course, that she'd been physically bullied, but that was the appearance that she had,

someone who's just faced that kind of an attack on her, her dignity and her integrity. She was highly upset.

Q. So, did you do what Professor St. Lewis asked you to do, which was to read the article?

5 A. Yes, I did. I sought it out, I, I assume, by doing a Google search. I can't be certain or clear in that recollection but my best recollection is that I would have Googled her name and found the blog post in question quite readily with the offending words in the label. So, I did read
10 the post. I realized, at that point, that it had been posted by or on the website or the blog that is maintained by the defendant, Mr. Rancourt. This website or blog was known to me because it had previously been drawn to my attention in my capacity as a member of the Senate. The Senate had frequently
15 been bombarded by one or more of its members with emails to all members of the Senate directing them to various posts made by Mr. Rancourt on the - on his website attacking the University of Ottawa or its administration or its president in a number of ways. So, I was familiar, generally, with the
20 site. I did not make a habit, of course, of reading it. Nevertheless, I found the blog post and I read the, the blog post in question, which I see...

Q. And the website, just for clarity, that you're referring to that, you know, the Senate was bombarded
25 with emails directing you to his blog, that was called what?

A. U of O Watch, as I recall.

Q. Okay. So, you're familiar - you were familiar as a Senator of the university with U of O Watch and Mr. Rancourt and you've - now, you've read it. What did you
30 do next?

A. After I read the article, I would have gotten

in touch with Professor St. Lewis and it's fuzzy in my recollection as to whether I would have went to her office, gone to her office or whether she would have come to mine and how we arranged that, but we had a discussion, a face to face
5 discussion, to the best of my recollection, and I described to her in general terms what the content of the posting was. In part, I sought to reassure her that words "house Negro" were the, I guess, the low point of the posting, that there were not further racial slurs that I could spot in the post itself.
10 I did, nevertheless, make it clear that the post clearly based or premised that labelling on her evaluation of the report that had been prepared by a student committee with respect to systemic discrimination at the University of Ottawa. So, it was clearly connected specifically to work that she had done
15 for the university. So, I gave her this general description of the, of the site. I sought to, I guess, what's the word, palliate, to offset, to a certain extent, the impact of the content by also referring to some of the comments that I had read that had been posted immediately after the posting, which
20 I said were in general, outraged and called out the post as being a racist post. So, I tried to provide - give some context. I did, I did this, again, because Professor St. Lewis had been so very upset and so very concerned when she first came to me and I was seeking to provide some degree of
25 comfort, while nevertheless, trying to be candid with her as to the contents of the posting.

Q. Now, switching subjects for a second and back in your role as a senator of University of Ottawa. What communications did the Senate receive and did you, as a
30 senator, receive from Joseph Hickey about Professor St. Lewis?

A. Well, there are two in particular that stand

out in my mind. Bear in mind that we, that is, all senators received a number of missives from Mr. Hickey in his capacity as a student member of the Senate but two in particular that related specifically to Professor St. Lewis had to do with an
5 article or a letter that had been written, addressed to President Rock of the university, essentially calling on Mr. Rock to apologize for the university's treatment of Professor St. Lewis and in so many words, essentially, repeating the allegations that had been made by Mr. Rancourt in his original
10 posting. So, that occurred in November. We received this email from Mr. Hickey, reproducing in the body of the email, the actual contents of the letter written to Mr. Rock from Mr. Schmidt, if I remember.

Q. And the...

15 A. I'm sorry, go ahead.

Q. Can you turn to Tab 2 of your tabs 2 and 3?

A. Yes.

Q. What are these tabs?

20 A. So, Tab 2 is a U of O Watch posting of Mr. Schmidt's letter with a caption, a heading, pointing to the effect that Mr. Schmidt campaigns for just treatment of Professor Joanne St. Lewis and I'm quoting, and contains the, the letter itself.

25 Q. And is that the letter you're referring to that's one of the two things that stood out that Mr. Hickey sent to the Senate?

30 A. That is right. My recollection is that the text of this letter was reproduced in Mr. Hickey's letter, sorry, Mr. Hickey's email to the Senate itself. So, there was no need to follow a link, for instance, to find this letter. It was bodily reproduced.

Q. And that's the letter that I'm looking at behind the green page on Tab 2?

A. That's right, titled, "Author Jeff Schmidt Campaigns for Just Treatment of Professor Joanne St. Lewis.",
5 dated November 21, 2011.

Q. And what was the other email that Mr. Hickey sent the Senate to...

A. The other email from Mr. Hickey was either a day or two later and this is a much shorter email from Mr.
10 Hickey simply calling attention of senators, members of the Senate to a, a posting on the U of O Watch website in which Mr. Schmidt allegedly apologized to Professor St. Lewis. So, it was a very short message from Mr. Hickey providing a link to the U of O Watch website and a link to specifically Mr.
15 Schmidt's alleged apology. And when one follows that link, as I did, one finds the document that is in my exhibit, Tab 3, behind the green page titled, "Author Jeff Schmidt Apologizes to Professor Joanne St. Lewis.", dated November 23, 2011. There may have been other communications from Mr. Hickey
20 related generally to the litigation, the ongoing litigation between Professor St. Lewis and Mr. Rancourt, largely targeted, I believe, at profess - at President Rock and calling upon him to take various steps, either to put an end to the litigation or to take various other procedural steps in
25 connection with the litigation. In addition to those missives from Mr. Hickey, another student senator, a Ms. Hazel Gashoka, on two or three occasions in 2012 and perhaps 2013, also sent general, generally distributed missives to all members of the Senate, again calling on President Rock to take various steps
30 in connection with the litigation or making various representations with respect to the litigation between

Professor St. Lewis and Mr. Rancourt.

Q. And last question, over the past three years since this Exhibit 3 was published by Mr. Rancourt, what are your observations of the physical and emotional impact that his articles have had on Professor St. Lewis?

A. Well, if we go back to the very initial interaction that Professor St. Lewis and I had after she became aware of the blog post in April of 2011, I described her position or her situation at that time as highly distraught, physically trembling, on the verge of tears at time, highly upset and emotional. I've seen Professor St. Lewis - I don't think I, I had ever seen Professor St. Lewis in that state ever before. Since then, I've seen her in that position or near to that position on a number of occasions, but punctuated on the other hand, with Professor St. Lewis in her more, her more familiar stance, which is that of a strong determined individual, determined to take the bull by the horns, to use an expression my father used to use, to come to grips with the situation, to address the situation and to correct what was clearly perceived by her as being a wrong that had been done to her. So, over the past three years, she and I have had frequent interactions where she has vacillated between these two poles, back and forth between situations of near exhaustion, emotional exhaustion, distress, emotional distress, punctuated, as I say, by periods of resolve, strength, determination to address what had been done to her. I do know that, at some point, she was required to take medical leave from her regular duties at the university. I remember discussing the wisdom of that step with her, at one point. In fact, encouraging her to do so because of my observation of the toll that the ongoing and repeated attacks

that were being made against her by Mr. Rancourt were having on her, on her well-being. So, out of concern for her well being, I did, in fact, counsel and advise and encourage her to take medical leave, if that was possible. In addition,

5 Professor St. Lewis has, on more than one occasion, expressed to me frustration over the fact that this entire ordeal has, in fact, robbed her of her ability to perform some of the functions that she's more accustomed to devoting her energies to at the law school and in particular with respect to, for

10 example, her mentorship of students and her participation in student activities, particularly those of the racialized student clubs and organizations on campus. She's continued to participate, to the extent of her ability, in those sorts of activities and to provide a leadership and mentorship role in

15 that regard but I know that on more than one occasion, she's felt frustrated that she's not been able to do so with the usual level of strength and dedication that she would bring to bear in that regard or at least, she feels that she hasn't been able to do so. Joanne is an inexhaustible supply and

20 font of energy, so I expect that she's nevertheless managed to be a great support to them, but the point is, it was clear to me that she was deeply frustrated that her energies had been diverted from what they are more commonly applied to, which is, again, to advance the fight against systemic racism and to

25 provide advice and guidance and counsel to her colleagues and to students and to that matter, to the greater profession, because she is called upon in that regard frequently to provide her expertise at conferences, judicial training seminars and the like. And it has been my observation that

30 her ability, her capacity to fulfill those more usual functions that she is a leader, a leader in, has been

compromised as a result of having to divert her energies to a considerable extent into the current situation in addressing the attacks against her by professor, sorry, former professor, Mr. Rancourt.

5 Q. Professor Currie, thank you very much. Those are all my questions.

THE COURT: Thank you, sir, you're free to go.

A. Thank you.

10 MR. DEARDEN: So, Your Honour, that was my last witness for the plaintiff's case and we would have read-ins. In terms of what remains to be done, I'll be reading in from two volumes I've put together of - from the examination for discovery of Mr. Rancourt on April 30th, 2012.

15 Then he was ordered to re-attend for refusing to answer questions and we did that examination July 5th, 2013. Then he was ordered to re-attend again because of his refusals to answer questions and we did another examination of him on August 16, 2013. And then, Your Honour, you recall that we had one exhibit for identification, which is the Volume three of the Book of Exhibits of Professor St. Lewis that dealt with email communications between Mr. Rancourt and Ms. Gervais of the Student Appeal Centre and what I've done is I've prepared a special volume, for your assistance, of read-ins that would match nine out of ten of those emails that are in that exhibit for identification. And then, you and I have to discuss off line from the jury what they hear about Mr. Rancourt's admissions and I've prepared

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5 that, as well but we would have to do that in a
voir dire. Now, yesterday, I may have been
overly optimistic that I could read all this in
so we're out of here at one. It's gonna be a
close call and it's gonna be the most boring
thing you've ever heard in this trial, 'cause I'm
just reading to you, but we may not finish by
one, Your Honour, and...

10 THE COURT: Well, that's fine. We are - we're
scheduled to be here all day, so we'll do it.

MR. DEARDEN: We'll definitely not be here all
afternoon. It's just gonna - starvation may take
over and we have to eat, so....

15 THE COURT: Yes, definitely, we will break at
one, whatever happens.

MR. DEARDEN: And do you want me to start now,
Your Honour, with reading?

20 THE COURT: If you're ready, we can start the
read-ins...

MR. DEARDEN: I'm ready.

THE COURT: ...at least for a half an hour and
take a break at 11:30 and continue then
afterwards.

25 MR. DEARDEN: So, Your Honour, I have the
originals of the transcripts of those three days
that we examined. So, read-ins, Volume 1. Your
Honour, I'll just hand up to you read-ins Volume
1 for the examination for discovery of April 30th
30 and make sure you're okay with the jury having
this. I've tabbed, so they look thicker than
they really are, 'cause there's lots of tabs in

here and we've put an index of the question numbers and the page numbers and then you'll see. So, Exhibit 1.

5 THE COURT: All right, possibly, ladies and gentlemen of the jury, just one comment here. Obviously, these are the - all of the transcripts of the examinations for discovery and what counsel has done here is that he has prepared books, which contain excerpts for this, which he wishes to read in, which is totally proper under the rules of procedure. I just want to point to you that the questioning - that the questions put to Mr. Rancourt, I see, were put in English and Mr. Rancourt chose and obviously, that was his right to do so, to answer the question in French. So, it's important for you to consider not the interpretation but the French answer. I mean, that's the official. If there's a - obviously, the read-ins by Mr. Dearden will be in, using the English, because - but the important thing is 10 that I think we should, it may take a little longer but I think what we should do is that, after the question has been read in, we should give you a little - a few seconds to look at the English so that there's no miscon - so that it - because it can happen that the interpretation turned out to be not exactly right or - so, I want you to understand that now when you hear it and later on when you are deliberating, if you choose to put any weight on any of this, that you make sure that you put - that you consider the 20 25 30

original words and not the translation.

MR. DEARDEN: Thank you, Your Honour. So, may we distribute Volume 1...

THE COURT: Yes, we may. You may.

MR. DEARDEN: ...to the jurors? May I begin, Your Honour?

THE COURT: Should we mark this as an exhibit then?

MR. DEARDEN: Yes.

CLERK REGISTRAR: Exhibit number 25.

EXHIBIT NUMBER 25: Volume 1 of read-ins - produced and marked.

MR. DEARDEN: So, ladies and gentlemen of the jury, I'll just go tab by tab, so we're at tab one. Question 37, "Yes. And the same thing for Black History Month in Canada. Prior to February 11, 2011, did you write an article or make a presentation about Black History Month in Canada?" Answer, "To my recollection, I can answer no to that question right now." Question 38, "Prior to February 11, 2011, did you teach a course about anti-black racism or oppression, a course?" Answer, "A course that would have been predominantly on that topic, correct?" Question 39, "It would have been about that specifically an anti-black racism or oppression course?" Answer, "So, specifically a course on that topic per se? No." Tab 2, question 48, "What about Black History Month in Canada?" Answer, "Same question, an entire three university credit course on that? The answer is no." Tab 3,

question 52, "Prior to February 11, 2011, did you write an article or make a presentation about systemic racism in Canada?" Answer, "Where it would have been the main topic and typically it would appear in the title of the article, is that what you mean?" Question 53, "It would be about that subject matter. I don't know what the title could be, anything but..." Answer, "But predominantly this would be about that topic?" Question 54, "About systemic racism in Canada?" Answer, "Predominantly?" Question 55, "Yes." Answer, "The core of the article would be on that?" Question 56, "Yes." Answer, "The answer is no." Tab 4, question 65, "I'm gonna show you, sir, from your U of O Watch Blog an article that is dated February 11, 2011 and the title is, 'Did Professor Joanne St. Lewis Act as Allan Rock's house Negro?' Do you see that?" Answer, "Yes, I see the hard copy that's in front of me." Question 66, "And you authored this article, correct?" Answer, "Yes." Question 67, "And you authored it in its entirety, like, this is solely your work?" Answer, "Yes. If I'm quoting certain things in quotation marks, we'd have to verify these things. For example, I quoted Mr. Major at some point. Obviously, this is quoting something I believe he said or wrote, but yes, I'm the only author of that article." Tab 5, question 81, "And you are the editor and manager of U of O Watch Blog?" Answer, "Yes, I think it would be correct to say that." Tab 6, question

90, "And my understanding, sir, is you control what is published on the U of O Watch Blog, correct?" Answer, "Yes. But from time to time, the blog spot company makes its changes, makes changes. However, in principle, yes, I control that." Tab 7, question 92, "So, you can control what content can be taken down or removed from your U of O Watch Blog, correct?" Answer, "Yes." Tab 8, question 98, "What is the blog account that you're referring to?" Answer, "As editor, I have a web address that gives me access to the blog's entry page to allow me to edit the blog." Question 99, "And what is that address?" Answer, "That address is used only by the person who controls the blog and I think I may be the only one who knows that address." Tab 9, question 117, "Now, what controls have you set for comments that can be posted on your U of O Watch Blog?" Answer, "I have right now, I have, I control comments entry. That is to say, each comment must be approved by me." Question 118, "So, when a comment comes into your U of O Watch Blog, you screen it?" Answer, "But I must inform you in answer to your question that my personal policy, which I apply rigorously, is that I refuse no legitimate comment. That is to say that the only comments, which I eliminate are the ones we would characterize in English as spams, which are companies selling stuff and the like. And so, those are the only comments, which in my practice I eliminate. The other comments,

5 whether they are in favour of the blog article,
against the blog article, or whatever criticism
they make, I allow them. The only exception I
make to this rule is the following, if the only
purpose of the comment is hatred, for example, if
the comment holds no information other than
insults, no criticism other than to express
animosity as the goal, no content other than
that, that being the primary thing, it has
10 happened on rare occasions from recollection,
that I block such comments." Tab 10, question
120, "Okay, so a comment comes in about a blog
that you've written and you screen those blogs
before the public can see what the comment is?"
15 Answer, "Yes." Question 121, "So, you have
control to delete comments on your U of O Watch
website, correct?" Answer, "Yes." Answer,
"Oui."

20 THE COURT: We don't have the yes, but the *oui* is
the important one.

MR. DEARDEN: Question 167 at tab 11, "Mr.
Rancourt, I'm gonna lend you a supplementary
affidavit of documents of Professor St. Lewis and
I'm gonna open it up at page 34 of 38 for you,
25 where you will find a December 6th, 2008 article
presumably written by you entitled, "Rock
Administration Prefers to Confuse Independent
with Internal Rather than Address Systemic
Racism." So, I will just show you that, sir, and
30 I had it opened where I want to take you."
Answer, "At page 34 of 38, yes." Question 168,

"Yes." Answer, "Mm-hmm." Question 169, "So, you authored that article, sir?" Answer, "Yes."

Question 170, "And you posted that article, sir, on the website for U of O Watch?" Answer, "Yes."

Question 171, "On December, and that would be December 8th, 2008?" Answer, "No." Question 172, "What did I say? December 6th, 2008?" Answer, "That's not what you said." Question 173, "That's what I'm saying now. I seem to have a problem remembering the specific date for this article for some reason, so let me start over. So sir, this December 6th, 2008 article at page 34 of 38, you authored and you posted that article on your website on December 6th, 2008?" Answer, "Yes." Tab 12, question 174, "Where did you obtain the photograph of Professor St. Lewis that we see on page 34?" Answer, "I don't remember."

Question 175, "Did you receive consent of Professor St. Lewis to publish that photograph of her on your website?" Answer, "I asked nobody's permission to use this photograph." Question 176, "Sorry, I didn't get that. Can you repeat that, please?" Answer, "I asked nobody's permission to use this photograph in such a way on the blog." Question 177, "You don't own the copyright in that photograph or photo, do you, sir?" Answer, "No." Tab 13, question 215, "Gradual change is not progress. Mr. Rancourt, the last two paragraphs of page 35 of 38, you state, 'Students who attempt to pass an internal report as an independent report would probably be accused of academic fraud but such intellectual

5 dishonesty appears to be acceptable to the
institution for a report denouncing a student
association allegation of racism in treating
academic fraud cases. Rather than being an
independent report and far from being a
professional calibre, the St. Lewis evaluation is
primary - is *prima facie* intended to diffuse a
media and public relations image management
liability for the university. The university
10 appears to be far more concerned with casting
doubt on the conclusions of the SAC report than
on an independent examination of the issues or on
implementing any preventive measures.' So sir,
you wrote those two paragraphs, correct?"

15 Answer, "Yes." Tab 14, question 228, "So, right
at the top of page 38 of 38, Mr. Rancourt, you
should see that you wrote quote, 'I predict that
St. Lewis is in line for a promotion to associate
professor soon.' Do you see that, those words at
20 the top of page 38?" Answer, "Yes." Question 2-
2-9, "You wrote those words?" Answer, "Yes."
Tab 15, question 2-4-3, "Now, Mr. Rancourt, first
of all, there's no doubt, is there, that you
indeed have communications with Ms. Gervais about
25 the 2008 SAC annual report prior to its public
release, correct?" Answer, "That's true." Tab
16, question 2-4-9, "I'm going to show you a July
1st, 2010 article that you wrote on your U of O
Watch, which we will call Exhibit 4. This
30 particular article is entitled, 'The U of O Watch
List of Allan Rock Lies, Deceptions, Evasions and

Hypocrisies.' Do you see that?" Answer, "Yes."
Exhibit Number 4, a copy of U of O Watch Blog
dated July 1st, 2010 entitled "The U of O Watch
List of Allan Rock Lies, Deceptions, Evasions and
Hypocrisies." Question 2-50, "You wrote this,
sir?" Answer, "Yes." And if you turn - question
2-51, "And if you turn to page two, the item
right in the middle of the page it says,
'Personally managed to cover up his
administration's 2008 campaign to discredit a
student union report about systemic racism
revealed February 2011.' And the text underneath
it reads, 'Access to information records show a
cover-up directly orchestrated by Allan Rock
himself to hide the fact that Professor Joanne
St. Lewis' evaluation was anything but
independent, as characterized by the
administration.' So, you wrote that and you
posted that item on your website, U of O Watch,
correct?" Answer, "Yes." Tab 17, question 2-60,
"Is it your evidence that Professor St. Lewis was
involved in this cover-up that you are referring
to on page 2 of 14 of Exhibit 4?" Answer, "It's
my personal opinion and as far as I'm concerned,
it has always been my opinion and it hasn't
changed whether I expressed it in writing or not
but it's my personal opinion that Professor St.
Lewis was not involved in the cover-up, the
cover-up that's discussed in this paragraph."
Tab 18, question 2-70, "Now, go to page 6 of 14
of this Exhibit 4 and you'll look at the item

and that you've written at the bottom of page 6 and that should read, 'Directed the spin in the production of a fraudulent internal report intended to cover up evidence for systemic racism at the University of Ottawa. The internal report, by a non-tenured staff, on which Rock personally made text modification suggestions was presented as an independent reported publication. The report's obvious main purpose was to discredit a student union report about systemic racism in the university's student appeal process.' And then, there's two other paragraphs that I'm not going to fill up the record with. So, you wrote those words, sir?" Answer, "Yes." Question 2-71, "You posted this item on U of O Watch website?" Answer, "Yes." Tab 19, question 2-7-2. "And sir, the fraudulent internal report that you refer to in the bold heading there for that item on page 6, that is Professor St. Lewis' evaluation report of November 2008?" Answer, "I would just like to point out is, I would just like to remind you that Mr. Rock himself never complained about this article. He never corrected it." Question, 2-73, "I couldn't care less. This is Professor St. Lewis' libel action against you for your defamatory publication about her, sir, so what we're looking at is page 6 of Exhibit 4 and there is an item, 'directed the spin and the production of a fraudulent internal report.' And I'm asking you quite simply, is that fraudulent internal report Professor St.

Lewis' evaluation of the 2008 SAC Annual Report?" Answer, "Yes. That's the report I had in mind when I wrote those words when I expressed this opinion." Tab 20, question 2-97, "Mr. Rancourt, when did you add this item that we are looking at on pages 6 and 7 in Exhibit 4 that is labelled, 'Directed the spin and the production of a fraudulent internal report', when did that make it into this July 1st, 2010 U of O Watch list of Allan Rock lies, as you call them?" Answer, "I don't recall, but I'm looking if it would be indicated on the document itself." Question 2-98, "No." Answer, "Pardon?" 2-99 "I didn't see it. I didn't see any indication. That's why I'm asking you." Answer, "Therefore, I don't know." Question 300, "Well, I would like you to let me know when you posted this." Answer, "I have no way of knowing that." Question 3-01, "And, sir, I take it that Mireille Gervais showed you the freedom of the information document that she obtained regarding Professor St. Lewis' evaluation before she published them herself on her February 11, 2011 article that she wrote about them?" Answer, "No." Question 3-02, "Never showed you?" Answer, "No." Question 3-03, "So, the first time you ever saw..." Answer, "I remember she told me it was a bundle in an envelope, in a large envelope, that she had received lots of documents, but she didn't show them to me." 3-04, "Did she tell you what she got in those documents, the contents?" Answer,

5 "She didn't give me a specific content but she gave me her conclusions. And generally, at some point, I don't remember when, but she told me, she spoke of the nature of the documents and their meaning, according to her." Question 3-05, "Okay. So, when you were saying access to information documents not yet disclosed by U of O Watch, you got the documents?" Answer, "No."

10 Question 3-06, "So, what are you referring to documents that you haven't disclosed yet?" Answer, "That it, that's it, exactly." 3-07, "Where did you get that information that they show Allan Rock directing his senior staff on how to make the report appear independent? Where did you get that information then if you didn't have the documents?" Answer, "That was likely part of the conversation I had with Mireille Gervais."

15 Question 3-08, "And when was that conversation?" Answer, "I don't know." 3-09, "So, you took her word for it, that those documents that you had not personally seen showed Allan Rock, the president of the university, directed his senior staff on how to make the report appear independent. You just took her word for it?"

20 Answer, "That may not be the best characterization of the situation. Yes, I trust Ms. Gervais' judgment and ability to analyze but if she told me such a thing, I would probably have said to her in our conversation, 'Are you certain?', or something to that effect. I verified. I probably asked for the nature of the

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communication and that would have led her to such a conclusion. We probably had a conversation about that." Question 3-10, "No. You did have a conversation on that topic, obviously, because you couldn't write that paragraph without having a conversation, agreed?" Answer, "That's true." Tab 21, question 3-19, "Fair enough. I just want to know what involvement or participation you had in the, I'll use the word 'preparation, production', just any contact or communication with Mireille Gervais about that report before it was publicly released, which looks like it was November, the date would be November 12th, 2008. What involvement or participation did you have?" Answer, "The first answer, since it's a general question, the first general answer is, very little. I had no participation. I didn't know the nature of what was going to be presented in terms of evidence she was going to put forward. I didn't know. I knew nothing of the cases she discussed because she discussed specific cases of students who, according to the report, had suffered discrimination. I knew absolutely nothing of these matters. I have no recollection of anything I knew or in which I was involved in terms of seeing, looking or commenting. I had no access to that information from where I was. I knew such a report was being prepared. I knew Ms. Gervais was working on that project and..." Question 3-20, "How do you know that?" Answer, "Because she told me. There you go." Question

3-21, "And did she give you some indication of what the conclusions were going to be?" Answer, "I don't think so, no, but I mean..." Question 3-2-2, "Did she give you some indication of what the contents were going to be?" Answer, "You're using the term 'some indication.' I mean, I think it was, I think it was understood that it was going to be a report that would identify a problem at the University of Ottawa regarding her work, regarding the work she does at the Appeal Centre and it was clear that this was a report to identify and denounce a problem and she was able to tell me somewhat the nature of the problem she was going to bring out. We had an opportunity to discuss it informally, surely. There you go."

Tab 22, question 3-79, "So, it's the one that says, 'Do you think I'm missing anything?' Answer, "Yes." 3-80, "And then I want you, because you'll have that email and you'll have the attachment to it and I want you to open that attachment and print it for me and produce it but here's my question, sir, she's asking you, 'Do you think I'm missing anything?' So, obviously, you had been in consultation with her about the SAC Annual Report before November the 2nd 2008. So, how much before this email was sent to you to see if she's missing anything, which is a dear Allan Rock letter that sends him a copy of the report and offers the university a chance to address the SAC's concern?" Answer, "No but I just want to go back to your previous question.

5 You told me that the third email you want what we
call in English the header, right? You want to
see all the information? You want the original
email and you stated there was an attachment to
that email, right? However, I see no evidence
that that's the case." Question 3-81, "I have no
clue what you just said to me and I'm not wasting
my time trying to clarify it for you but I am -
10 what I'm asking you now is, when she asked you,
'Do you think I'm missing anything?', you have
knowledge of this report at this point in time,
because if you didn't, why would she be asking if
you missed anything? So, how much before
15 November the 2nd were you privy to what was going
to go to Allan Rock and members of the
administration regarding this mistreatment of
students, unfair practices and systemic racism
report of the SAC?" Answer, "Listen, Mr.
20 Dearden, your question is what I would call a
trick question for the following reasons. You
are telling me that when she's asking me do I
think I'm missing anything, you're saying she's
talking about her report. However, it's quite
obvious that in the email chain, I think she's
25 talking about this letter she wants to send to
the administration. We can see in my reply that
I'm responding in relation to this letter. So, I
can't answer your question if I have to admit to
something that's incorrect in answering."
30 Question 3-82, "Mr. Rancourt, what involvement or
participation did you have with respect to the

5 SAC's report, prior to November 2, 2008 when
Mireille Gervais sent you this email saying, 'Do
you think I'm missing anything?' Answer, "I
repeat, Mr. Dearden, the phrase, 'Do you think
I'm missing anything?' refers to a draft letter
she was planning on sending to the administration
and not to her report and I've already told you
that I had next to no - I had no input or
10 suggestions or I didn't see a copy of her report.
I didn't read her report before it was published
and I gave no precise feedback with respect to
the content - with respect to the text of her
report ever. I..." Question 3-83, "So, out of
the blue, out of the blue..." Answer, "I had
15 discussions with her about her report, but - and
that's all." Question 3-84, "When? When did you
have those discussions about her report?"
Answer, "I don't remember." 3-85, "Are we
talking prior to this email?" Answer, "I don't
20 remember right now." Question 3-86, "Well, is it
your evidence, sir, are you seriously saying
under oath..." Answer, "It was in 2008."
Question 3-87, "...that you just got this out of
the blue, you got this email from Mireille
25 Gervais out of the blue?" Answer, "No." 3-88,
"And you're a professor at the university and she
asked you, 'Do you think I'm missing anything?'
Answer, "No." 3-89, "So, you did have some
knowledge of this report before this email
30 arrived, correct?" Answer, "I knew she was -
that she was preparing this report, that she

wanted to send it to the administration, this email chain talks about the letter, how she wants to present this report to the administration. The question, 'Do you think I'm missing anything?' refers to the letter in question and not to the report. We can see in my reply that I am responding in relation to her question about the letter and not the report. So, the way in which you are asking this question, you seem to want to insist this question, 'Do you think I'm missing anything?' relates to the report and it's quite obvious that's not the case." Question 3-90, "So, you just got an email out of the blue?" Answer, "I already explained that I had the opportunity to talk with Mireille Gervais about her project and what she was - the work she was doing." 3-91, "Okay. You're a prof still at U of O as of November 2nd, 2008, correct?" Answer, "Yes." 3-92, "You're still teaching?" Answer, "Yes." 3-93, "So, why is the Director of the Student Appeal Centre consulting you as to whether she's missing anything in a communication that's going to go to the president of the university?" Answer, "Why not?" 3-94, "Well, why are you involved?" Answer, "Well, because I have contact with Mireille Gervais and she consults me for things relating to her work from time to time. That's all." 3-95, "No, it's not just *c'est tout*. Why are you, in particular, involved with the SAC who are about to attack the university in this report? Why?" Answer, "That

question is loaded with innuendoes. Listen, I know Mireille Gervais. I've known her for many years and we have a relationship in which I give her information about the operation of the university, where I give her advice, et cetera. When she feels like asking me questions, if I have the time, I answer. There you go." Tab 23, question 4-09, "To not provide information that you should be providing on this examination, you should be providing that answer, sir. So, still on Exhibit 6, you write Mireille Gervais at 8:33 p.m. on November 2nd, and say, 'It's perfect.' And then you suggest some changes to the cover letter that's supposed to go to Allan Rock and you like the approach?" Answer, "Yes." Tab 24, question 4-4-1, "I'm going to show you one more exhibit. Number 9 is an email, Mr. Rancourt, that you sent to Mireille Gervais on December 11, 2008 at 7:47 p.m., and she again is sending you an email that doesn't have a date and it has an attachment." Answer, "Wait, I don't have the exhibit in front of me. Okay, yes. Exhibit Number 9, a copy of an email from Denis Rancourt to Mireille Gervais, dated December 11, 2008 at 7:47 p.m." Question 4-4-2, "So, you see in the middle of the page, you have an email that she sends to you, 'What do you think of this much delayed blog post? Thank you. Thank you.' And there's an attachment, first blog entry version two and it's 22 k, and you then email her, 'Fantastic post, very clever. See small

suggestions attached and track changes.' And that's what's attached?" Answer, "Mm-mmm." 4-4-3, "What I want you to do, sir, is print out Mireille Gervais' email on a stand alone basis that shows me the time that you got and that as well as print out the attachment to that email." Answer, "I'm taking note of it so that is okay." Question 4-4-4, "Now, I take it, you had the entire attachment and reviewed it because you're making track changes to it?" Answer, "I don't know. I'll check and I'll get back to you." Tab 25, 4-4-7, "If you look at Exhibit 9 in this one page that you're making track changes to, there's a paragraph that you don't make track changes to. It's right in the middle of the page and it says, 'St. Lewis concludes her report with 10 recommendations that echo the SAC's recommendations and demands.'" Answer, "Mm-hmmm." "Do you see that?" Answer, "Yes, I see." Question 4-4-9, "You don't take issue with that part of the SAC's response, do you?" Answer, "I have no recollection of that." Question 4-50, "Well, do you today as we're sitting here?" Answer, "This statement? This sentence? I have no personal reason to object to this sentence." Tab 26, question 4-78, "On February 11, 2011, at 4:39 p.m., Mireille Gervais sent you two links?" Answer, "Yes." Tab 27, question 5-02, "I'm going to put to you Exhibit 12 and ask you do you recollect that this document, which is a Student Appeal Centre news item of February 11, 2011, is

5 what she sent you in the link that we see here
for UofOappeal.blogspot.com?" Answer, "Quite
probably. That's what it looks like, but there
are highlights here I don't recognize. You
highlighted many things in yellow. Obviously,
that would not have been there. Exhibit 12, a
copy of a Student Appeal Centre news article of
February 11, 2011, entitled, 'Freedom of
10 Information Documents show Joanne St. Lewis' Lack
of Independence from Central Administration."
Twenty-eight, tab 28, which for some reason is
not showing the question number, Your Honour. It
should be question 5-06, on page 1-81. Sorry.
It follows what's at tab 27, Your Honour, so that
15 would be question 5-0 - it's part of question 5-
06.

THE COURT: All right.

MR. DEARDEN: So, I'll read all of 5-06, Your
Honour, from the transcript itself. It says,
20 question, "So, to the best of your recollections
as you sit here today, is that Exhibit 12, is
probably what she sent you in that link?"

Answer, "So, before I answer, I'm going to look
to see if something sticks out that would be out
25 of the ordinary." And then we pick up, Your
Honour, what I have at Tab 28. So, it was just
before I answer, I'm going to look to see if
something sticks out that would be out of the
ordinary. So, Mr. Dearden, "And while you're
30 doing that, I'm going to ask Madam Court Reporter
to enter this February 11th, 2011, 6:38 p.m. email

as Exhibit 13 to this examination." Exhibit Number 13, a copy of an email from Denis Rancourt to Mireille Gervais, dated February 11, 2011, at 6:36 p.m. Answer, "Nothing sticks out, but I didn't take the time to look at each word, obviously." Question 5-07, "So, this Exhibit 13 that we've been discussing, Mr. Rancourt, it says, '*Joyeux Noël en retard.*' So, you've put..." Answer, "No, wait, hang on, 5-08?" "What do you want me to wait for?" "I'm trying to see what you're referring to. I don't see it." "Well, don't you see that under Gmail?" Answer, "Oh, yes. Okay, the title with subject. Thank you." Question 5-10, "So, you wrote that title, that subject line, *Joyeux Noël en retard*?" Answer, "No." Question 5-11, "So, Mireille wrote that title?" Answer, "I think so, yes." Five, twelve, "So, she says to you, late Merry Christmas, she's sending you the SAC blog of February 11, 2011." Answer, "She is sending me a link to the blog, yes. She's sending me a link to the entire blog as it would have existed at that time." Question 5-13, "And you're crying with joy for what reason?" Answer, "I'm expressing that I'm happy she blogged on that topic and that she put up her blog." Question 5-14, "Sir, to your answer, you're telling her 'I'm crying with joy that is the most best Xmas present I ever got. I love you!' So, the Xmas present that you're referring to is what she's linked in her 4:39 p.m. email?"

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Answer, "It's the fact that she produced this article, this blog post, yes." Question 5-15, "And you responded at 6:36, so about two hours later, that you were crying with joy about that blog and it's the best Christmas present I ever got?" Answer, "I'm the one who sent this email." Question 5-16, "I'm asking you why that blog was your best Christmas present you ever got?"

Answer, "I'm not going to answer that question because it goes to motive and intent. It's not a question of information." Tab 29, 5-14, question 5-14, "Sir, to your answer, you're telling her 'I'm crying with joy. That is the most best Xmas present I ever got. I love you!' So, the Xmas present that you're referring to is what she's linked..." I'm getting déjà vu here. It's a repeat.

THE COURT: That's a repeat, yeah.

MR. DEARDEN: That's a repeat. Do I have all of 5-16, as well? Yeah. Okay. So, tab 29 is just a repeat of what's in tab 28. At tab 30, question 5-21, "Why are you telling the director of the Student Appeal Centre of the University of Ottawa that you love her? Why are you saying, 'I love you!', with an exclamation mark in relation to her sending you the SAC blog?" Answer, "I prefer, I won't answer that question." Tab 31, question 5-60, "So sir, I served you with the May 16, 2011 take down and libel notice. Do you have that?" "No." Mr. Dearden, "We will call that Exhibit 14." Exhibit 14, a copy of the two-page

letter from Rick Dearden addressed to Denis Rancourt dated May 16, 2011, re U of O Watch Blog Joanne St. Lewis. Question 5-61, "You were served this notice, Mr. Rancourt?" Answer, "Yes. Give me one second, I'll read it, it's not very long." Question 5-62, "Mr. Rancourt, you're sure eating up a lot of time." Answer, "It's only been a few seconds. I'm looking at the document you just handed me, which isn't part of the documents we have to bring in." Question 5-63, "You know I served you with this, sir." Answer, "Of course, I admit it. That - is that your question?" Question 5-64, "Yes, that was my question. I served you with this?" Answer, "Okay, sure, of course." And tab 32 of Volume 1, question 5-73, "Okay, Mr. Rancourt, I'm taking that as a refusal. Now, I'm gonna show you tab 40 again. It is a blog that you or I'm gonna ask..." Answer, "Also, I must say that this last question seems like a question directly intended to attack my credibility." Question 5-74, "No, I was just asking you if you complied with it but because you refused to answer that question, I will deal with that another day. I'm showing you tab 40 of Professor St. Lewis' affidavit of documents. It's a blog of May 18th, 2011, 'Top Dog Canadian Freedom of Press Lawyer Targets U of O Watch Blog.' I just want you to confirm, sir, that you are the sole author of this article." Answer, "Yes, except for the parts where I may have quoted other authors, yes. Like, I, for

example, I quote some emails." Five, 75, "No, but you created the quotes. I mean, you authored..." Answer, "Yes, I did." Question 5-76, "...this entire..." Answer, "Absolutely." Question 5-77, "Okay, and you posted it on your website, U of O Watch?" Answer, "Yes."

THE COURT: All right. Let's take the morning break at this time.

...JURY EXITS (11:45 a.m.)

R E C E S S

U P O N R E S U M I N G :

THE COURT: Bring the jury.

CLERK REGISTRAR: Order, all rise.

...JURY ENTERS (12:05 p.m.)

CLERK REGISTRAR: All members of the jury are present, Your Honour. You may be seated.

MR. DEARDEN: So, Your Honour, could I enter the next volume as Exhibit 26?

THE COURT: Exhibit 26.

MR. DEARDEN: Which will be Volume 2 of read-ins for the examination for discovery held on April 30, 2012.

EXHIBIT NUMBER 26: Volume 2 for read-ins of the examination for discovery held on April 30, 2012 - produced and marked.

MR. DEARDEN: May I continue, Your Honour?

THE COURT: Yes, let's proceed.

MR. DEARDEN: Okay. So, tab 33, question 5-78, "And I want you to confirm that I served you with

the May 20th, 2011 notice, which we will mark as Exhibit 15." Answer, "But if you served it on me and you have proof of it, then I don't understand why I must confirm it." Exhibit Number 15, a copy of the one page letter from Richard G. Dearden to Denis Rancourt, dated May 20, 2011 re: U of O Watch Blog, Joanne St. Lewis. Question 5-79, "Okay, well confirm it anyway, if you could, sir." Answer, "I don't have the original I received in front of me, but yes, it looks like what I would have received." Question 5-80, "Yes. You're not taking issue with the fact that you got served with this notice, correct?" Answer, "I may not have been served on the date that's indicated but that is, I would have to check, that's all." Question 5-81, "What was it the next day?" Answer, "I don't know. I don't remember." Question 5-82, "Well, then why are you saying that?" "Because I noticed..." Answer, "Because I noticed on a few occasions that certain documents you give me are sent to me at a date that is different from the document's date, that's all. You're asking me to confirm. I am under oath. You're asking me to confirm I was served, so I'm telling you precisely what the situation is." Question 5-83, "Well, you are confirming that, at some point, you did get served with this letter, correct?" Answer, "Yes." Tab 34, question 7-4-9, "No, it isn't completely blocked. This Facebook page in this group is the *contre le revoir de monsieur*

Rancourt at the very top of the page, you see?" Answer, "Okay, yes." Question 7-5-0, "Against the dismissal of Mr. Rancourt?" Answer, "Yes, there is such a group on Facebook." Question 7-5-1, "And you belong to this group, don't you, this Facebook group?" Answer, "Well, yes, I'm one of the members or whatever you call it, a friend of this group, I imagine is how we call it. I may be..." Question 5 or 7-5-2, "You post messages on this Facebook page?" Answer, "Absolutely. I..." Tab 35, question 7-6-5, "Now, the title of this Facebook page is against the dismissal of Mr. Rancourt. That is your labour grievance case against the University of Ottawa for dismissing you, correct?" Answer, "Yes." Question 7-6-6, "So, why are you posting messages about the defamation action that you were involved in with Professor St. Lewis on this Facebook page?" Answer, "I don't think it's a question of information or belief. That goes to motiv and so I don't think I have to answer such questions." Question 7-6-7, "So, you are refusing?" Answer, "Mm-hmmm." 7-6-8, "How many members of this Facebook group received your messages relate to the - that relate to this defamation action and the comments that appear in it relating to this defamation action?" Answer, "No idea. And I don't think it's possible to know the answer to that question." Seven, six, nine, "Actually, they will say so right in the Facebook page..." Answer, "No." Seven, seventy,

"...how many friends there are?" Answer, "Yes, but it doesn't say who receives messages. It says the number of persons who are subscribed as friends but it doesn't say which ones asked to receive messages." Seven, seventy-one, "Okay. Let's deal with that first. The number of friends or members, I should say, of this Facebook group page against the dismissal of Mr. Rancourt, how many are there?" Answer, "I don't know. I don't see the information." Seven, seven, two, "My understanding is there's over 340." Answer, "It's entirely possible." Seven seven, three, "And my understanding, sir, is that if you post a message and let's just look at the - in the first page, 'update in defamation lawsuit', so you've posted a message on this Facebook group page and I'm looking at the very first page, second from the bottom, 'update in defamation lawsuit', and then there's something from U of O Watch that you put on there November 24, 2011, as an example?" Answer, "Yes, there is a link." Question 7-7-4, "Right." Answer, "Yes, there is a link that added as a comment but this link is a U of O Watch blogspot.com link." Tab 36, question 7-7-9, "Go to the fourth page of Exhibit 16, sir, at the bottom of the fourth page of Exhibit 16." Answer, "Yes." Seven eighty, "You write, 'Consider attending the motion hearing of October 6th at the courthouse in the crazy case of the defamation law suit against me.' And then you have five people that are

actually putting comments to that, including Joseph Hickey who says, he's gonna go to it and there's the other people you see on page five." Answer, "Yes." Tab 37, 7-85, "What did you do there when it says that Aspora (ph) was added by Denis Rancourt on November 22, 2011? What does that mean?" Answer, "That means a person is asked to become a member of the group and that I, when I visited the group, I saw this request and I had the authority to accept the request." Question 7-86, "So, you have control?" Answer, "Yes, I remember now." "So, then I've got Carla Coco..." Answer, "I remember now that I have administrator rights to accept members and do other things on this site." Seven eighty-eight, "And do you have control to also delete messages on this Facebook group page?" Answer, "Probably." Seven eighty-nine, "You know that as a fact, don't you? It's not probably. You know you can, don't you?" Answer, "Yes, I..." Question 7-90, "Yes, that's what I thought." Answer, "Yes, absolutely." Tab 38, question 8-14, "You have a personal Facebook page as well, don't you?" Answer, "Yes." Eight fifteen, "I'll show you what I'll mark as Exhibit 17. Do you have that document, sir?" Answer, "I have it in front of me, yes." Exhibit Number 17, a copy of Denis Rancourt's personal Facebook page. Question 8-16, "So, is that your personal Facebook page that's public?" Answer, "Yes, at some point in time, you printed what you could

from this site, which is my site, namely my personal Facebook page." "And when this was printed...", question 8-17, "And when this was printed, you had over 400 Facebook friends?" Answer, "It says 4-02, but you have to be careful with these figures because they're not precise." Question 8-18, "Well, how many are there today?" Answer, "I don't know." Tab 39, question 8-24, "It's your personal Facebook page?" Answer, "Let me answer the question. When someone on Facebook joins a group that's identified as a religious group, it's possible that Facebook..." - excuse me - "...automatically puts the membership to that group in the religious views section. I'm not sure. I have no recollection of having put that myself, but..." Question 8-2-5, "Okay. Did you answer anarchist to the political views category that they have there? Is that you that inputted that?" Answer, "Probably, yes." Tab 40, question 8-3-9, "And why are you posting messages or information about this libel action on yet another website?" Answer, "The Rancourt.academicfreedom.ca website contains a web page on which you can see links leading to documents that were put in front of the court." Question 8-40, "Yes. And I ask you why are you drawing more people's attention to this law suit in that other website Rancourt.academicfreedom.ca?" Answer, "That's a trick question but I can tell you that my intent is to make these documents public." Question

8-41, "Sorry? Say that again, please?" Answer, "My intent is to make these documents that are in front of the court, public, to give easy, free, and public access to these documents." Question 8-42, "And so more people can learn about what you have written about Professor St. Lewis?" Answer, "Those are your words." Tab 41, question 8-47, "Joseph Hickey is one of your Facebook friends?" Answer, "I think so, yes." Question 8-49, "Well, I want you to check that for me, please. You know who your friends are. Well, I've asked you for a list of the 402 friends anyway but I'm also specifically asking you to produce or let me know whether Jeff Schmidt is a Facebook friend. You know who Jeff Schmidt is, don't you?" "Yes." "Okay. I will have questions for you about him." Answer, "I'm sure Jeff Schmidt doesn't use Facebook as far as I know, so we can resolve that issue rapidly." Tab 43, question 8-5-3, "You also have a Twitter account, correct?" Answer, "Yes." Eight five-four, "And I'll show you Exhibit 18, which comes from tab 73 of Volume 4 of the affidavit of productions. How many followers do you have?" Answer, "I don't know, but there aren't many." Exhibit 18, a copy of Denis Rancourt's Twitter page. Eight five-five, "Well, I would like you to tell me how many followers you have." Answer, "How is that relevant?" Question 8-5-6, "Because you, for instance, if you turn to page 2 of Exhibit 18, you have sent out a National Post

article about this lawsuit against you and I want to know who you're sending information to via Twitter about Joanne St. Lewis and this libel action." Answer, "How is a media article in national newspapers and the fact that I sent it to someone relevant to this action?" Question 8-5-7, "Because you are further disseminating your damaging publication and calling Joanne St. Lewis a house Negro to the people who receive this tweet, as an example." Answer, "No, what you're saying is false. If I send a media article to someone, I'm not sending..." Question 8-5-8, "Yes, and what do you think the content of it is?" Answer, "The article in question." Eight five- nine, "Yes, the National Post article that you've tweeted." Answer, "It talks about the case." Eight sixty, "Yes, and what do you think it says?" Answer, "I don't recall the content of the article." Question 8-6-1, "Exactly. So, I want you to provide me a list of your followers so I know the extent of the damage that you are causing Professor St. Lewis with the tweets that you sent out about her or this libel action." Answer, "I don't think it's relevant. There's nothing here." Tab 44, question 8-7-2, "So, why are you sending an email that attaches a link to U of O Watch Blog spot Professor Joanne St. Lewis and gives your name as the contact name and gives your home phone number..." Answer, "Mm-hmm." Eight seventy-three, "...to about a hundred journalists in this country?" Answer, "Okay.

But first of all, you've asked a question about the list of media and I'm gonna answer it. This list of media is a list I've built myself personally, one email address at a time, throughout the years, so I'm very used to send [sic] messages to the media and I've been doing that for a number of years and when you see an email address for a media in Ottawa or that's national, I keep it in order to send such emails. So, that's the explanation as to the origin of the email addresses and you asked me why I sent this link to the media and the answer is because I wanted to - the media to receive this information." Question 8-7-4, "Why?" Answer, "So that they received the information and do whatever they want with it." Q, 8-7-5, "Okay, Mr. Rancourt, would it be fair to say that you basically emailed reporters from coast to coast in the country of Canada in this hundred plus email list that I see here?" Answer, "I don't know if it's coast to coast is an accurate characterization. I see the Star. There's probably the National Post somewhere. I don't know, but it's - I don't know." Eight seven-six, "You don't have any Vancouver?" Answer, "Yes." Eight seven-seven, "Okay, so that's one coast. You've got Halifax Herald in here?" "I don't know. Do you see it somewhere?" "Vancouver, no, I don't. I don't see Vancouver. Any way, it's not." Question 8-7-8, "You created this list, sir?" "Yes." Question 8-7-9, "So, you've sent

to print, radio, TV journalists throughout the country, the information that I see at tab 19?" Answer, "I don't know. We'd have to look at each email." Question 9-10 at tab 45, "Now, the next one is a news suggestion that you sent out. We will mark as Exhibit 20. This is an email that you've sent to student news editors on June 25th, 2011 at 5:02 p.m." Answer, "Okay. It's at what tab?" Exhibit Number 20, a copy of an email dated June 25, 2011, at 5:02 p.m. from Denis Rancourt addressed to a group of student media editors. The email is entitled, "News suggestion." Question 9-11, "I will just wait for you to have it." Answer, "Okay, so June 25th, 2011." Nine-twelve, "I think it's Tab 21 of your productions but at any rate, you've got Exhibit 20. And so this, you sent this email to these student editors, Mr. Rancourt?" Answer, "Yes, that's an email I sent." Nine thirteen, "And you are attaching or you say, 'Please consider...' to news suggestions, you say, 'Please consider following this lawsuit against a professor over blog spot or blog post story.' and you attach articles from the Citizen, Vancouver Sun, Edmonton Journal, Windsor Star, amongst other and say, 'Summer issue, back to school news cap, news re-cap.' What do you mean by that, 'Summer issue back to school news recap'? You're encouraging them to write a back to school news item on this?" Answer, "Those are questions that intend to suggest how they could follow this story and

at what time they could do a media follow-up on the story." Tab 46, "So, we're deal...", question 9-15, "So, we're dealing with a plaintiff who is a University of Ottawa law professor and you're encouraging student news editors to write a story about your publications that are subject of a libel action in which you have said she acted as a house Negro to a university president. Why are you doing that, sir?" Answer, "I'm informing them of what's happening in the media and what's happening in this matter and I'm suggesting they could, if they want and if they have time, follow this media story." Question 9-16, "And what is the - what do you mean by the M-S-M have found it newsworthy? What is M-S-M?" Answer, "That's an acronym meaning mainstream media." Question 9-17, "And ergo, these student news editors should find it newsworthy, as well?" Answer, "I don't understand the term 'ergo'." Question 9-18, "Therefore, you are suggesting to the student news editors that they should find it newsworthy as well, because the mainstream media found your..." Answer, "I encourage them to compare themselves to what is being done in mainstream media and to decide for their readers whether it's appropriate or not." Question 9-19, "I'm not gonna argue with you. I'm going to put on the record I want you to print out the links that you sent to these student editors that I see at Exhibit 20 and I know you are going to object to

that and we will deal with that another day.”

Answer, “The links are already printed out and they are there in front of you. You can read them.” Tab 47, question 9-2-1, “The next email blast you did enter as Exhibit 21.” Answer, “I don’t recognize the term ‘blast’. I sent an email with several people who received the message.” Exhibit Number 21, a copy of an email from Denis Rancourt dated July 22nd, 2011 at 4:06 p.m. showing the heading, “News: Rancourt files statement of defence in Joanne St. Lewis Defamation Lawsuit. University of Ottawa Law Prof Sues Former Colleague.” Question 9-2-2, “Okay, this is an email, Mr. Rancourt, that you sent to all these media organizations and reporters on July 22nd, 2011 at 4:06 p.m.?”

Answer, “Yes, that’s an email I sent.” Tab 48, question 9-2-5, “Now, the next one I’m going to show you is Exhibit 22, you sent a few minutes later on July 22nd. That’s at 4:25 p.m. And again, it’s the same subject line and what’s the difference between this list of people of journalists, a number of journalists, at least, maybe different category of people, what’s the difference between the list that you sent Exhibit 21 to and the list that you sent Exhibit 22 to?”

Answer, “I just received the document in question. First of all, the subject line is not the same. In the first one, Exhibit 21, the title starts with ‘NEWS’, in caps and in the second one, the title is, ‘University News’.”

And Exhibit Number 22, a copy of an email from Denis Rancourt dated July 22nd, 2011 at 4:25 p.m. with the heading, "University News. Rancourt files statement of defence in Joanne St. Lewis Defamation Act LawSuit, University of Ottawa Prof Sues Former Colleagues." Question 9-2-6, "You don't have to waste my time with trivial differences, sir. I'm asking you, the people you sent it to, what's the diff?" Answer, "Those media in Exhibit 22, the most recent one, I'm looking at the email addresses and they seem to be student media." Question 9-2-7, "Well, President at CUP.ca, for instance?" Answer, "Yes." Nine two-eight, "Is that a student?" Answer, "Yes." Nine two-nine, "What's the cup, what's the C-U-P?" Answer, "C-U-P, it's Canadian University Press. I mean, that's Canadian University Press, I think." Nine thirty, "So, okay." Answer, "So, Canadian University Press is a national organization, a student congregation, a student media association on the English side." Tab 49, question 9-3-1, "Okay, I understand. The next exhibit I'm showing you is Exhibit 23. It's an email dated August 29th, 2011, at 1:49 p.m., from you to Ottawa Citizen reporter, Neco Cockburn. You sent this email, sir?" Answer, "Give me one second. Yes." Exhibit 23, copy of an email dated August 29, 2011, at 1:49 p.m. from Denis Rancourt addressed to Neco Cockburn of the Ottawa Citizen. Tab 50, 9-3-7, "And the next email I'm gonna show you that you sent out is

going to be Exhibit 24 and this is an August 29th, 2011 email at 1:51, 1:54 p.m. that you sent to that list that I see in Exhibit 24, sir?"

Answer, "I can't be sure it's the same list."

Exhibit 24, a copy of an email from Denis Rancourt dated August 29, 2011 at 1:54 p.m. with the heading, "Development in U of O house Negro Alleged Defamation Case." Question 9-3-8, "First of all, I want to establish that you did send this Exhibit 24 to the email list that I see in the bcc line, so it looks like about a hundred?"

"Yes, that's my..." Answer, "Yes, that's my email." Question 9-3-9, "And you sent it?"

Answer, "Yes." Nine-forty, "And at the bottom, it says, 'Expert says no to racism, so?" Answer, "Yes." Tab 51, question 9-80, "Does he attend your labour grievance hearing, sir?" Answer, "Can you explain to me how that is relevant?"

Question 9-8-1, "Because he's one of your supporters is why it's relevant. He's written some really nasty things about Professor St.

Lewis and the libel action." Answer, "Sir, perhaps you want to show me things Mr. Hickey has written. I don't know that Mr. Hickey attended some labour grievances hearings." Question 9-8-

2, "And Joseph Hickey attends public proceedings in this libel action, correct?" Answer, "Not

all. Far from it, but yes, some." Question 9-9-9 and tab 52. "I'm showing you another exhibit, which will be 27. It comes from tab 58 that you've got open there. So, you, on your U of O

5 Watch website, you announce that Mr. Hickey has
launched this discussion forum website about this
libel action?" Answer, "Yes. You're talking
about an article on my U of O Watch Blog dated
December 2nd, 2011, where I put a link to an
article that is published on another site, which
this forum site thing - I don't know what - yes."
10 Exhibit number 27, a copy of a page taken from
the U of O Watch Blog dated December 2, 2011,
announcing the website entitled, "Forum for
Discussion and Debate on the Lawsuit University
of Ottawa - Joanne St. Lewis vs. Denis Rancourt."
Question a thousand, "Why are you publishing this
information?" Answer, "To convey the information
15 to the readers of the blog." Question 1,010,
"What did I say? I have no idea what you're
talking about but Exhibit Number 28, Mr. Hickey
has posted on his forum for discussion that you
have alerted your U of Watch - U of O Watch
20 readers to the full house Negro article of
February 11, 2011." Answer, "Yes, but..."
Exhibit 28, a copy of a web page entitled, "Forum
for Discussion and Debate on the Lawsuit
University of Ottawa - Joanne St. Lewis v. Denis
25 Rancourt." Question 1,011, "And you knew that?"
Answer, "However, the link you pointed out to me
in Exhibit 27 isn't necessarily the link leading
to this article. I would have to check. I don't
30 know but it seems to me that's the link, given
its name. It seems to me that the link entitled
'Forum for Discussion and Debate in the Lawsuit

University of Ottawa - Joanne St. Lewis v. Denis Rancourt.' It doesn't seem to me like the link for the article that's entitled what you are showing me here, so I'm not sure." Question 1-0-1-2, "Well, I'm telling you it's there. Just look at the top of the page. It says, 'Forum for Discussion and Debate on the Lawsuit University of Ottawa - Joanne St. Lewis v. Denis Rancourt' and there is the article that he's reproduced, which is your house Negro article." Answer, "I agree that this article is reproduced on the forum for discussion blog but I don't agree that the link you've shown me before..." Question 1-0-1-3, "Yes, and you..." Answer, "...leads to this article. That's all." Question 1-0-1-4, "...you have drawn people's attention to your house Negro article that he has re-published on this forum. Why did you do that?" Answer, "No, I disagree with your characterization. I pointed out here a link leading to the forum for discussion and you are telling me that on this forum for discussion, there's this article that you say is a reproduction of my February 11, 2011 article. So, I don't agree with your characterization. I pointed out the existence of a forum for discussion. I didn't point out a specific article on that forum." Question 1-0-1-5, "You told me you read his forum. His forum has the house Negro article re-published." Answer, "Yes." Tab 54, question 1-0-1-8, "Okay, the next Exhibit 29 is a November 21st, 2011 U of

O Watch Blog entitled, 'Author Jeff Schmidt Campaigns for Just Treatment of Professor Joanne St. Lewis Student Senator Reports.' And you say that the University of Ottawa Student Centre, Joseph Hickey has reported this development related to the St. Lewis v. Rancourt defamation suit and you provide a link to, 'Author Jeff Schmidt Campaigns for Just Treatment of Professor Joanne St. Lewis.' You authored this November 21st, 2011 blog, Mr. Rancourt?" Answer, "Yes." Exhibit Number 29, a copy of the November 21st, 2011 U of O Watch Blog article entitled, "Author Jeff Schmidt Campaigns for Just Treatment of Professor Joanne St. Lewis Student Senator Reports." Question 1-0-1-9, "And you were the one that posted this particular blog and the link to Jeff Schmidt's campaign for just treatment of Professor Joanne St. Lewis?" Answer, "I created the blog article, this link. I don't know where it leads precisely, but yes, I'm the one who put this link and who created this blog article." Question 1-0-2-0, "I'm gonna show you Exhibit Number 30, which is the link printed out and that is, 'Author Jeff Schmidt Campaigns for Just Treatment of Professor Joanne St. Lewis, November 21st, 2011.'" Answer, "Okay." Exhibit Number 30, a copy of a memo from Jeff Schmidt addressed to Allan Rock in an article appearing on a Student Eye's View website entitled, "Author Jeff Schmidt Campaigns for Just Treatment of Professor Joanne St. Lewis dated November 21st, 2011." One, zero,

two, one, "You see that?" Answer, "I see here an article that's published on a blog entitled, 'A Student's Eye View'." Question 1-0-2-2, "Did you read Exhibit 30, which is the printout of the link that you have in Exhibit 29? Did you read that? So, it's an email that Jeff Schmidt is sending to Allan Rock and cc'ing to Joanne St. Lewis and Joseph Hickey." Answer, "Yes, I read it at the time." Question 1-0-2-3, "And why are you drawing your readers' attention to Jeff Schmidt's, what I'll call a memo to Allan Rock on November 21st, 2011?" Answer, "So, that my readers be aware of this memo." Question 1-0-2-4, "Why do you want your readers to be aware of this memo of Jeff Schmidt to Allan Rock?" Answer, "Well, that may be - that information may interest them especially given that my blog is reporting on the events, the developments and things with respect to this case amongst others, and many other topics also. So, it's relevant and it's something that may interest my readers." Question 1-0-2-8, "And then you do it again a couple of days later, Mr. Rancourt. I'll give you Exhibit Number 31, which is a U of O Watch Blog of November 23, 2011 entitled, 'Author Jeff Schmidt apologizes to Professor Joanne St. Lewis, U of O Student Senator Reports.' So, you authored this U of O Watch Blog and added that link to author 'Jeff Schmidt Apologizes to Professor St. Lewis'?" Answer, "Yes. I am the author of the blog post - of the blog article of

December [sic] 23, 2001 [sic] on U of O Watch." Exhibit 31, a copy of U of O Watch Blog of November 23, 2011 entitled, "Author Jeff Schmidt Apologizes to Professor Joanne St. Lewis, U of O Student Senator Reports." Question 1-0-2-6, "And I'm gonna give you Exhibit Number 32, which is a printout of the link that you posted in your Exhibit 31, and it's a November 23, 2011 memo from Jeff Schmidt to me, cc'd to Joanne St. Lewis and Joseph Hickey, do you have that?" Answer, "That doesn't look like Exhibit Number 30 you showed me a little while ago but you're saying it was taken from the same blog, right?" Exhibit Number 32, copy of a memo from Jeff Schmidt addressed to Richard Dearden in an article appearing on a Student Eye View website entitled, "Author Jeff Schmidt Apologizes to Professor Joanne St. Lewis, dated November 23, 2011." Question 1-0-2-7, "First of all, I'm not sure I'm hearing it right. Exhibit Number 31 is your U of O Watch Blog November 23, 2011?" "That's 31, yes." Or answer, "That's 31, yes." Question 1-0-2-8, "Right, and 32 is a Student Eyes [sic] View, you're reporting that following the previous report, University of Ottawa Student Senator Joseph Hickey has reported the latest development related to the St. Lewis v. Rancourt defamation lawsuit. And I'm saying to you that this is what that link, this is a printout of that link." Answer, "Okay, I accept." One zero two nine, "Which is a memo from Jeff Schmidt to

me and you read that now - you read that memo that Jeff Schmidt wrote to me on November 23rd, before you posted a link to it. You knew what was in it." Answer, "Surely, yes." Question 1-0-3-0, "Okay." Not the - answer, "Not the comments that are attached here but the text of the main letter, surely, yes." One zero three one, "And you've known Jeff Schmidt for over a decade, right?" Answer, "I don't remember. I don't know, about 10 years, yes." One zero three two, "Okay. And he lives in the United States of America?" Answer, "Yes." One zero three, three, "What city - where? What city?" Answer, "Washington, I believe." One zero three four, "Washington, D.C.?" Answer, "Yes, I believe so." One zero three five, "And he was dismissed by his employer a while ago, as well, right?" Answer, "A long time ago, yes." One zero three six, "And you supported him in imposing that dismissal, correct?" Answer, "I took part in a public campaign against his dismissal, yes." One zero three seven, "Including you sending letters and showing your support for Jeff Schmidt?" Answer, "We could say that, yes." One zero three eight, "And you signed a petition that supported Jeff Schmidt?" Answer, "Yes." One zero three nine, "And you sent emails in support of Jeff Schmidt?" Answer, "Sure." One zero four zero, "And you've appeared on panels together, at conferences, you and him?" Answer, "Only once, I believe." Question 1-0-4-1, "You wrote a positive review

about a book he wrote a couple of years ago?"

Answer, "Probably, but I don't recall where that review would have been published. I don't even know if it was published. I don't know exactly."

One zero four two, "And Jeff Schmidt has supported you in your dismissal from the University of Ottawa, correct?" Answer, "I have no recollection of a concrete act he may have committed. Maybe he wrote direct to Allan Rock at some point. I'm not too sure. I..."

Question 1-0-4-3, "Well, my understanding is, that he signed a petition in support of your dismissal, sir." Answer, "Yes, that's very likely." One zero four four, "And I understand also, he wrote letters of support to the University of Ottawa." Answer, "Maybe. I don't know if there were many. There was one, surely."

Tab 55, "Now, I'm showing you Exhibit 33." This is question 1-0-5-4. "Now, I'm showing you Exhibit 33, which is an email you produced at tab 53. And this is an email, Mr. Rancourt, that you sent to Jeff Schmidt on September 23, 2011, at 10:47 a.m." Answer, "It would seem according to what is written here on the email and it's an email I surely would have sent to Mr. Schmidt."

Exhibit Number 33, a copy of an email sent by Denis Rancourt addressed to Jeff Schmidt, dated December [sic] 23, 2011 at 10:47 a.m. Question 1-0-5-5, "And what we have at Exhibit 33 is Jeff Schmidt on September 23, 2011, emails you and says, 'I'm planning to send the letter below to

5 Allan Rock. Would you please check to make sure
that I have the facts right? Cheers, Jeff.' And
then we have on the next page, the letter that he
was telling you he was going to send to Allan
Rock." Answer, "Mm-hmm." One zero five six,
"And you, in your email at 10:47 a.m. say, 'Hi,
Jeff, I appreciate your concern as always but I
don't feel this letter would be helpful." Tab
10 56, 1-0-7-2, "And I sent you take down notices
for both of the U of O Watch Blogs that
completely mislead people into thinking that Jeff
Schmidt is apologizing to Professor St. Lewis and
you have not done anything in response to my take
down letters. Why?" Answer, "If we ignore the
15 first part of your question, which is an
unwarranted characterization, it's true that I
didn't take down the blogs in question." Tab 57,
question 1-0-9-2, question, "You screen
comments?" Answer, "Yes." Tab 58, question 1-0-
20 9-9, "First of all, we go back to Tab 55,
anonymous is posting a link to Jeff Schmidt's so-
called campaign for just treatment of Professor
St. Lewis?" Answer, "Yes." One thousand, one
hundred, "This tab 55 is dealing with the Black
25 Students' Association public statement?" Answer,
"Yes." Question 1-1-0-1, "Jeff Schmidt, none of
Jeff Schmidt's publications have anything to do
with the Black Students' Association or with what
the Black Students' Association made a statement
30 about, so that's completely irrelevant?" Answer,
"No, I don't agree." Answer [sic] 1-1-0-2, "So

5 why are you leaving an irrelevant - you show me
where in Jeff Schmidt's November 21st and November
23rd memos there's anything relevant to the Black
Students' Association public statement." Answer,
"The Black Law Students' Association's public
statement is about this legal action and that is
in front of us and Jeff Schmidt's letter is also
about this action. So, they're related and it's
10 relevant." Question 1-1-0-3, "Oh, that's how you
determine relevance. Is that anything to do with
the lawsuit? You'll just stick it in. Any kind
of..." Answer, "As I've told you, I accept every
comments except those that express aggression
only and give no information. I've already
15 explained that to you." Tab 59, 1-1-6-8, "Okay,
who is Steve Lendman?" Answer, "Steve Lendman is
a journalist." One, one, six-nine, "Lendman."
Answer, "Is an independent American journalist."
One, one seven oh, "Where does he live?" "I
20 don't know." "But he..." Question 1-1-7-1, "But
he lives in the States?" Answer, "Yes." Tab 60,
question 1-1-7-5, "Has he had email exchanges
with you about this libel action?" Answer, "No."
One, one, seven, six, "Well, actually it's not
25 true. I'm showing you a June 25th, 2011, 11:17
email exchange between you and him where he does
know about the lawsuit and you're telling him,
'You decide if you want to discuss the St. Lewis
lawsuit. Angered me when I saw it." Answer,
30 "Okay, I had forgotten that comment he made but
we hadn't discussed elements. He saw something

and he mentioned to me that it had bothered him, but I had no discussion with him or exchanges other than that one." Exhibit Number 35, a copy of an email exchange, dated June 25, 2011 at 11:17 between Denis Rancourt and Stephen Lendman. One, one, seven, seven, "Mr. Rancourt, just so I understand Exhibit 35, at the bottom where it says 'June 25, 2011 at 10:42', this is Mr. Lendman emailing you, right?" Answer, "Yes." One, one, seven, eight, "And he's saying if you decide that you want to discuss the St. Lewis suit or you decide if you want to discuss the St. Lewis suit, how does he even know about it, that you may want to discuss it?" Answer, "Well, I imagine he saw things on the Internet and he knows it's something in which I'm involved that's important. And so as a journalist, he's giving me that information." One, one, seven-nine, "And he was gonna write about it. You were in contact with him because he was gonna write about this libel action?" Answer, "I don't know." One, one, eight, oh, "Well, Exhibit 36..." Answer, "I know he has..." "Pardon?" Answer, and this is one, one, eight, one, answer, "He writes a lot and he's got a radio show." And the next tab, Your Honour, is answers that Mr. Rancourt provided to undertakings on July 16, 2012 and just as backdrop, Your Honour, Mr. Rancourt, in this first examination, had refused to answer a number of questions and I brought a refusals motion and before we argued it before Justice

5 Smith, Mr. Rancourt provided half the answers in writing. So, he provided them a number of months after I asked the questions and some of them were undertakings and Tab 62 are other answers that he provided in a different document. So, this document at Tab 61 is "Answers to Plaintiff's Requested Undertakings in the Plaintiff's Refusals Chart Served on July 13, 2012 Provided by the Defendant on July 16, 2012." The answers to the undertakings are numbered following the plaintiff's numbering of issue and following the transcript question number. And issue number six, questions 4-4-3 and 4-4-4, the stand alone email and its attachments are attached below and what is attached is a memo or an email rather, from Ms. Gervais to Denis Rancourt, December 11, 2008 at 12:59 p.m., "What do you think of this much delayed blog post? Thank you. Thank you." And then there's an attachment, first blog entry dot. And then, there's - and then, it's a printout of it, which I'm not gonna read in, found as part of Tab 61. And the next tab, 62, is answers of Denis Rancourt to most of the questions in the plaintiff's refusals and undertakings charge served on July 13, 2012, provided under oath by Denis Rancourt on July 17, 2012 and there's a heading A, "Defendant's Communications with Student Appeal Centre Director, Mireille Gervais." Question 5-16, "And I'm asking you why that blog was your best Christmas present you ever got?" Answer, "The

entire text of the February 11..."

THE COURT: So, just to make sure for the record, he writes in English to you?

MR. DEARDEN: Yes.

THE COURT: All right.

MR. DEARDEN: All the time.

THE COURT: That's fine. No, no, but I mean, okay, so that is not a translation?

MR. DEARDEN: It is not, sir.

THE COURT: Okay.

MR. DEARDEN: This is verbatim from the document that he provided.

THE COURT: Okay.

MR. DEARDEN: It's quite a long document but I'm only extracting the answers to these questions.

THE COURT: Thank you.

MR. DEARDEN: So, in the entire - the answer, "The entire text of the February 11, 2011, 6:36 p.m. email, Exhibit 13, my production Schedule A, Tab 14 is, 'I'm crying with joy. That is the most best Xmas present I ever got. I love you!' Mireille Gervais is a friend. She had mentioned in passing she had an Xmas present for me. We never exchange Xmas presents. Without giving any indication what it was. My reply to her was irony, an exaggeration. It has no meaning beyond that. We both have little regard for Xmas as a commercial event. The words express the opposite of their literal meaning, that I'm not impressed, that this is not a good Xmas present, that I do not care about Xmas presents, that I do not have

feelings for her beyond friendship and respect." Question 5-2-1, "Why are you telling the director of the Student Appeal Centre of the University of Ottawa that you love her? Why are you saying, 'I love you!' in relation to her sending you the SAC blog?" Answer, "Same answer as above. The style, the most best Xmas present and the exclamation mark and the over statement of love are all meant to communicate irony and exaggeration as explained above." Question 4-6-9, "Can you copy the link that Ms. Gervais has provided to you in her February 11th, 2011, 2:38 p.m. email that says, 'Freedom of information documents prove Joanne St. Lewis lack of independence from central administration.' I want a copy of that link, please." Answer, "You are referring to an email that I produced at Schedule A Tab 14. For some reason, you did not put the latter document in exhibit in asking me your question, therefore, I submit this document as an exhibit to support my instant answer, Tab 1-14, attached. The text, freedom of information documents prove Joanne St. Lewis lack of independence from central administration is underlined as freedom of information documents prove Joanne St. Lewis lack of independence from central administration in the body of the email, but it is not a link. There is no link in the email exchange Tab 1-14. I have verified the original electronic email to confirm this. Therefore, no link can be provided. Your

question makes the incorrect assumption that the underlined text is a link." And the attachment, you will find Tab 1-14, as the second document of attachments, ladies and gentlemen of the jury, at Tab 62. So, question 4-7-8, "On February 11th, 2011, at 4:39 p.m. Mireille Gervais sent you two links." Question 4-7-9, "The English one is uofoappealsblogspot.com. I want you to print out both of those links for me that she sent you on that date." Answer, "Your question related to Exhibit 13, which is produced Schedule A of Tab 15. In the body of the email, the links appear as [http.rancourtuottawablogspot.com](http://rancourtuottawablogspot.com) and [http.uofoappeals.blogspot.com](http://uofoappeals.blogspot.com). The corresponding URLs, uniform resource locators, are the same. These are the actual web addresses. I have verified the original electronic email to confirm this. Whether the web articles pointed to by these URLs are the same today as they were on February 11th, 2011 at 4:39 p.m. is not possible for me to know. I consulted the English web article, pointed to at that time, February 11, 2011. Your position expressed in your refusals chart that a link is tantamount to an attachment or an enclosure to a letter that should have been produced is not a reasonable position. I have no such document in my possession or control. If you wish to go to the web articles pointed to today by these URLs and to print what you find, that is entirely up to you." Question 3-6-9, "What I'd like you to do, sir, I would like you

to print out the stand alone email that Ms. Gervais sent you on November the 2nd, 2008, 'cause I don't see a time in what you produced here. I don't see the time she sent you this. I just see the time that you replied to it, which is 8:33 p.m., and then her next reply, which is 9:36 p.m. You see, as I'm reading this, the first email that creates this chain is in the middle of the page. You have Mireille Gervais saying, 'Do you think I'm missing anything?', but I don't see a time when she sent that to you, whereas the other two emails have times. So, I want you to print out, as a stand alone, this email that you got from her that says, 'Do you think I'm missing anything?', and the attachment that she sent to you, which presumably is the SAC 2008 annual report. But I don't know if that's a draft or if it's a final version. So, I want you to print out that icon for me, okay?" Answer, "Yes, the stand alone email that you request is attached as Tab 2A. The nominal sent time is 9:29 p.m. So, the first document is Tab 1-14, an email title, 'Idea, Denis Rancourt to Mireille Gervais February 11th, 2011 at 4:20 p.m. states, 'It's good, but better use show instead of prove. Under stage is best here. How about access to information shows U of O cover-up of systemic racial discrimination report minimization. U of O cover-up of campaign to discredit racial discrimination report access to information shows. Last one is my favourite. Yours is

5 good and more specific. I think the cover-up is
the big malfeasance issue here. They covered up
the lack of independence and their interference.
Cover-up is the major wrongdoing that directly
implicates Rock and Major and other top people,
signed, Denis." And then the email below that is
one, February 11, 2011 at 2:38 p.m., Mireille
Gervais to Mr. Rancourt, "What do you think?"
And then in bold print, "Freedom of information
10 documents prove Joanne St. Lewis lack of
independence from central administration."
So, Your Honour, I have two more read-ins, one
from July 5th and one from August 16th, and they're
that thick but it's one o'clock.

15 THE COURT: Yeah, we'll do that after lunch. Two
o'clock.

MR. DEARDEN: Thank you, Your Honour.

...JURY EXITS (12:57 p.m.)

20 R E C E S S

U P O N R E S U M I N G :

THE COURT: Ready?

MR. DEARDEN: Yes, sir.

25 THE COURT: Bring the jury.

CLERK REGISTRAR: Order, all rise.

...JURY ENTERS (2:02 p.m.)

CLERK REGISTRAR: All members of the jury are
present. You may be seated.

30 THE COURT: All right, good afternoon. Let's
proceed then.

MR. DEARDEN: Thank you, Your Honour. So, Your Honour, the next exhibit will be read-ins from the examination for discovery of Denis Rancourt on July 5, 2013.

CLERK REGISTRAR: Exhibit Number 27.

THE COURT: Thank you.

EXHIBIT NUMBER 27: Read-ins from the examination for discovery of Denis Rancourt on July 5, 2013 - produced and marked.

MR. DEARDEN: So, the first tab, Your Honour, and ladies and gentlemen of the jury, is question 1-2-2-6, "Now, Mr. Rancourt, Exhibit 37, which are your answers to most of the questions in the plaintiff's refusals and undertakings chart that you say you provided under oath on July 17th, do you adopt these written answers as part of your examination for discovery today?" Answer, "Not for today's examination." Question 1-2-2-7, "As part of your examination for discovery period?" Answer, "Yes." Tab 2, question 1-2-2-8, "And the same for the undertakings that you've provided me in Exhibit 38, you adopt the written answers that you've provided to me in Exhibit 38 as part of your examination for discovery?" Answer, "Yes, because it's clear in the manner in which I express it in my emails." Tab 3, question 1-3-5-9, "I will. Now, you've attached, Mr. Rancourt, on page two of your written answers, you will see a reference to Tab 1-14, and I'm going to enter that as the next exhibit, which I believe is Exhibit 42." And then Exhibit 42, a copy of an

5 email, dated February 11, 2011, sent by Denis Rancourt to Mireille Gervais at 4:20 p.m. under the heading title, "Idea." The document is identified as Tab 1-14 in Denis Rancourt's written answers. Question 1-3-6-0, "Tab 1-14 is an email, Mr. Rancourt, from you to Mireille Gervais, February 11, 2011 at 4:20 p.m. First line, 'It's good but better use show instead of prove. Under state is best here.' Why is under state best here?" Answer, "Refusal." Question 1-3-6-1, "And in that email that Ms. Gervais sent you on February 11, 2011 at 2:38 p.m., we see the words in bold, 'Freedom of Information Documents Prove Joanne St. Lewis' Lack of Independence From Central Administration.' That is a suggested heading to a blog that Ms. Gervais was about to publish that day. How do you know what the better heading, if you didn't have the actual article that matched that heading, Mr. Rancourt?" Answer, "Refusal." Question 1-3-6-2, "And your email to Ms. Gervais, February 11, 2011 at 4:20 p.m. says, 'Last one is my favourite. Yours is good and more specific. I think the cover-up is the big malfeasance issue here. They covered up the lack of independence and their interference. Cover up is the major wrongdoing that directly implicates Rock and Major and other top people.' Why is the last one your favourite, Mr. Rancourt?" Answer, "Refusal." Question 1-3-6-3, "And page three of your written answers, Mr. Rancourt, you attach at Tab 2A, which I will mark

as Exhibit 43 and this is Mireille Gervais' email to you, dated November 2, 2008 at 7:29 p.m." Exhibit Number 43, a copy of an email dated November 2nd, 2008, sent by Mireille Gervais to Denis Rancourt at 7:29 p.m. under the heading "Quick advice." The document is identified as Tab 2A in Denis Rancourt's written answers. Question 1-3-6-4, "The first line reads, 'Do you think I'm missing anything?' Why is Ms. Gervais asking you, Mr. Rancourt, if she is missing anything in the communication that's going to go the president of the university?" Answer, "Refusal." One three six-five, "And Mr. Rancourt, your written answer to question 370 says, 'I don't know if changes were made between the time this report was sent to Allan Rock and the time it was made public by the SAC. If there were changes, I believe they would have been minor, but I don't know.' How would you know if there were changes, they would have been minor, Mr. Rancourt?" Answer, "Refusal." Mr. Dearden, "No, I'm not." in answer to the monitor saying something inaudible. The witness, answer, "No, it's Exhibit 37. He's quoting Exhibit 37 at page 3." Tab 4, question 1-3-9-9, "You will see just about the middle of the page an answer that starts, 'No, I have not concluded that Professor St. Lewis was unprofessional. I never made such a conclusion about Professor St. Lewis' work. I do not know Professor St. Lewis' work. From her, I have studied only her 2008 report and emails

that were made public.' And I want you to identify and produce the emails that were made public that you are referring to in that answer." Answer, "I refuse to go any further. However, for the purpose of saving time for you, I'm not going to follow in this line, but I believe that it's clear, according to the context here, that the emails that we're talking about are the ones included in the FIPPA documents that were made publicly available." Question 14 hundred, "How is that possible, Mr. Rancourt? We're talking about the December 6th, 2008 blog here." Answer, "Unless I'm mistaken." Question 14-0-1, "So, you had those FIPPA?" Answer, "Oh." Fourteen oh two, "The December 6th, 2008 blog and the work that Professor Lewis conducted was November 2008. So, are you saying the emails you were referring to there were the FIPPA, were the emails we find in the FIPPA response that eventually got published by Mireille Gervais and you on February 11th, 2011?" Answer, "Okay, this paragraph is not pertinent. The interpreter relative is not related to the article solely, the 2008 article. It's a paragraph talking about my opinion and there you have it." Question 14-03, "What emails are you referring to?" Answer, "So, I've already answered and I refuse to go any further." Tab 5, question 1-4-0-9, "We will argue about this in another form on another day, Mr. Rancourt. Again, Mr. Rancourt, on page six of your July 2012 answers, the first answer you give, 'No, I

have not concluded that Professor St. Lewis was intellectually dishonest. I have never made such a conclusion about Professor St. Lewis' honesty. I do not know Professor St. Lewis. I have studied only her 2008 report and emails that were made public." "What emails are you referring to there, sir? I want you to identify them and I want you to produce them." Answer, "Refusal. Already answered." Tab 6, question 1-5-4-1, "Was Adele Mercier attending a cross-examination of you and Mr. Lamontagne almost two years ago? Was she the woman that was sitting in that cross-examination?" Answer, "*Il y avait...*" Question 1-5-4-2, "October, 2011." Answer, "The time that there were three members of the public present?" Question 1-5-4-3, "Yes, that I asked to leave and they wouldn't?" Answer, "Yes, she was one of the individuals." Tab 7, question 1-5-5-4, "Have you had email communications with Adele Mercier?" Answer, "No, but I just told you that item 18 of my Schedule B was with Adele Mercier." One five, five, five, "Is she one of your Facebook friends?" Answer, "I think this is not - just a moment, it's possible that she is." Question 1-5-5-6, "Twitter follower?" "I don't know." Question 1-5-5-7, "Has she attended any..." Answer, "But with regards to Twitter follower, I've given you a complete list today, I believe, if I'm not mistaken." One five, five, eight, "But your recollection is, you don't know, but we will get to that list." Answer, "I don't think

5 so." Question 1-5-5-9, "Has she attended any of your labour grievance hearings against the University of Ottawa?" Answer, "Yes." So, the next volume of read-ins, Your Honour, is from the August 16, 2013 examination for discovery of Denis Rancourt and that will be Exhibit Number...

CLERK REGISTRAR: Twenty-eight.

MR. DEARDEN: ...28.

10 EXHIBIT NUMBER 28: August 13, 2013 examination for discovery of Denis Rancourt - produced and marked.

MR. DEARDEN: Tab 1, question 2-0-6-1, "Mr. Rancourt, you adopt all of the answers that you've written in Exhibit Number 37, correct?" Answer, "Yes, these are the answers I've provided to answer the refusals questions in the motion."

15 Tab 2, question 2-0-7-0, "Let me show you the email, Mr. Rancourt. It's Exhibit 13 to your examination for discovery that occurred on April 30th, 2012 and I see at the bottom of that, on February 11, 2011 at 4:39 p.m. that Mireille Gervais writes to you by simply providing you links. One is rancourtsottawa,

20 uottawablogspot.com and the other link is uofoappeals.blogspot.com. And then she has a smile symbol above her name Mireille, you see that?" "Yes." So that, question 2-0-7-1, "So, that's the Xmas present?" Answer, "Yes, it seems that it is, but then my answer was..." Question 2-0-7-2, "No, we will get to that, Mr. Rancourt. I'm still..." Answer, "...re..." Question 2-0-

7-3, "...trying to understand..." Answer, "D'accord." Two, zero, seven, four, "...what it is you're referring to in your email that you sent her February 11th, 2011 at 6:36 p.m., which is above the one that Ms. Gervais sent you at 4:39 p.m. where you say, 'That is the most best Xmas present I ever got'." Answer, "Then from memory here, I knew that Mireille Gervais was going to make a blog post on that question. I knew that on that day, I think. I was waiting to hear what it was because in 2008, I had posted a blog in December, December 6th, 2008, where I had made a critique of Ms. St. Lewis about the Appeal Centre, Student Appeal Centre. So, I'd already tackled that question. I'd already had done some work on that and I had already wrote an article in 2008 and I was interested and curious in knowing the development of that. I was curious when Ms. Gervais did mention to me that she was going to post another article in her blog. I don't deem that to be my joke. No, correction, the kind of humour I was using, that was to say, yes, it's not a Christmas present. That was the meaning of that email. So, I would say it was done in a joking way, yes." Question 2-0-7-5, "So, I'm going back to Exhibit 13. You say quote, 'I'm crying with joy. That is the most best Xmas present I ever got.' And Ms. Gervais email only provides you links to her blog of February 11, 2011, correct?" Answer, "The links that I see yes, on the main page for those blogs

are in French and in English." Two zero seven-six, "And the links she provided you, Mr. Rancourt, would be her blog, which I'm showing you as Exhibit 12 to your examination for discovery of April 30th, 2012, correct?" Answer, "No. The links that I see here are links from the home page but back then, the article that was on the home page at that time, I guess, was, must have been the article you were showing to me now, dated February 11th, 2011, entitled..." Question 2-0-7-7, "That is what you're saying was your most best Xmas present you ever got, correct?" Answer, "No, I was just saying that it did not count as a Christmas present. This was ironic." Two zero seven-eight, "Now, Mr. Rancourt, you're not answering my question." And then the answer in French is "*Non, non, mais j'ai pas fini.*" Two thousand, seventy-nine, "I will remind you, sir..." Answer, "*J'ai pas fini.*" Two thousand and eighty, "...you are under oath to tell the truth, okay? So, this Exhibit 13, there is nothing there except two links from Ms. Gervais. You had to be saying that you were crying with joy and that this is the most best Xmas present I ever got by reading Exhibit 12 that you have in your hands right now, by reading the blog that she had posted entitled, 'Freedom of information documents show Joanne St. Lewis' lack of independence from central administration.' Do you agree?" Answer, "I certainly did read that blog." Two thousand and eight-one, "At that

time. That's what you're reacting to in your email of 6:36 p.m., correct?" Answer, "Yes. And also the contents of this blog. I must have read that blog. I was reacting to that and also the information therein and the few of them must include, yes, at the end there is a link entitled, so back then I figure it was a link. So certainly, I must have read these documents. I know for a fact that I did read these documents." Question 2-0-8-2, "And these documents being the FIPPA documents?" Answer, "Yes. They were the FIPPA documents that were made public by Mireille Gervais by downloading them. I think they were downloaded to the site archive.org. So from memory here, I think this link in the blog would take us to a page on archive.org and that page then would give access to a pdf document, which contain the documents, the FIPPA documents, that Ms. Gervais had made public." Tab 3, question 2-1-0-2, "So, why is your answer in Exhibit 31, page 1, saying that what Ms. Gervais sent you on February 11, 2011, which is Exhibit 13 to your examination, not a good Xmas present?" Answer, "It's not hard to understand, sir. It's humour. It's saying if someone who never gives Christmas gifts, who has never given me a Christmas gift and they mention they have a Christmas gift and later I see that it's simply information that I can use so my answer is humouristically, it's not a good Christmas gift because normally, when most

people exchange Christmas gifts, it's not information about what's going on at the institution where they work. These are usually personal gifts, something of that nature. So, it's obvious that it's humour." Question 2-1-0-3, "No, it's not evident, at all. Absolutely not evident at all from Exhibit 13, Mr. Rancourt. I see no reference in Ms. Gervais' email to you about an Xmas present. Nothing. It's you that says, 'It's the best Xmas present I ever got.' Where is the humour there?" Answer, "You make your arguments to the jury but it's not the time to do, make your arguments now." Tab 4, question 2-1-1-1, "Telling someone I love you with an exclamation mark is humour?" Answer, "Oui." Two one, one, two, "That's your evidence, sir?" Answer, "Everything is in the context. Humour is a question of context. And please, make your arguments to the jury." Tab 5, 2-1-1-7, "Where is the irony, Mr. Rancourt, in what we see in Exhibit 13?" Answer, "The irony is in the fact that the sense is opposite to what is being said." Question 1-1-8, "Really? Where do I see that in Exhibit 13, Mr. Rancourt? 'I'm crying with joy. That is the most best Xmas present ever, I ever got. I love you! Denis.'" Answer, "*En fait, de l'irony.*" Two one, one, nine, "Where is the irony?" Answer, "When being ironic, sir, you don't explain your irony in the ironic message. What you are proposing, with all due respect, is not reasonable." Tab 6, question

2-1-6-8, "Okay. So, you were fired in 2009. Why are you, sir, being consulted by Ms. Gervais, the director of the Student Appeal Centre, after you had been dismissed by the university?" Answer, "Before and after. Well, because my knowledge doesn't go away by the fact that I stopped being an employee there." Two one six nine, "Knowledge of what, Mr. Rancourt?" Answer, "I just told you, all of the things that a professor would normally know." Question 2-1-7-0, "Including the president of the university? Did she consult you about actions or inactions of President Rock?" Answer, "I do not have any personal knowledge of the president of the university." Two one, seven one, "I asked you the question." Answer, "*Mais j'ai...*" Two one seven two, "Did she consult you about anything that Allan Rock, the president of the University, did or did not do?" Answer, "I know that she consulted me on how to interact with the higher administration and it might include the president. So, she consulted me on that." Two one seven three, "I'm being more specific, Mr. Rancourt, and you know it." Answer, "What is your question?" Two one seven four, "Did Mireille Gervais, when she worked or while she was working, because she's still working at the Student Appeals Centre, at any time, consult you about actions or inactions on the part of President Rock in terms of the administration at the University of Ottawa?" Answer, "Actions or inactions, these are general

vague terms. I cannot pinpoint a specific case right now. Perhaps I don't remember a specific case. If you do have one, I could answer your question." Two one seven five, "I want to know in the time period between February 11, 2011 and the date you were dismissed, which is sometime in 2009, why the director of the Student Appeals Centre is consulting you about administration matters and in particular, matters involving President Rock?" Answer, "For the same reasons that she consulted me before 2009, for the very same reasons." Two one seven six, "The only - you've told me is you were a prof. There's what, hundreds and hundreds of professors on campus?" Answer, "Yes, you are right." Two one seven seven, "Okay, what is it about you then, your knowledge, that had her coming to you for advice?" Answer, "You'd have to ask her that question. She chose to call me, so well, ask her the question." Two one seven eight, "Did you call her?" "This is very rare." Tab 7, question 2-1-8-7, "So, Mr. Rancourt, your written answers at Exhibit 37 attached at Tab 1-14..." Answer, "Yes." "...which we will enter as Exhibit Number 58, a printout copy of a one-page email exchange between Denis Rancourt and Mireille Gervais under the heading title 'Idea.' The document here bears a Gmail logo and is identified as Tab 1-14 of Exhibit Number 37." Question 2-1-8-8, "In Exhibit Number 58, Ms. Gervais sends you an email on February 11, 2011 at 2:38 p.m. which says,

5 'What do you think?' and then there's a heading,
'Freedom of information documents prove Joanne
St. Lewis' lack of independence from central
administration.' You see that?" Answer, "Yes,
there is. Yes, I see the exhibit. I also see
what's written." Two, one, eight, nine, "Well,
I'm confirming your written answer is that what I
see in Mireille Gervais' 2:38 p.m. email is not a
link. It's a suggested heading for her blog,
10 correct?" Answer, "Where is the written answer?
Which page, please? Oh, I see. One of two."
Two one nine oh, "Page two." Answer, "Oui." Two
one nine one, "Top of the page." Answer, "Mm-
hmm." Two one nine two, "So, just, I want you to
15 look at Exhibit 58 itself, the actual email."
Answer, "Mm-hmm." Two one nine three, "When I
look at the words, 'Freedom of information
documents prove Joanne St. Lewis' lack of
independence from central administration', I'm
20 understanding your evidence correctly in your
written answer that it's not a link. That's what
her suggested title or headline to her blog is
going to be and she is asking..." Answer, "Yes."
Question, "Yes.", in 2-1-9-4. Two one nine-five,
25 "And she is asking you what do you think of that
headline, correct?" Answer, "Yes." Two one nine
six, "And what you think of that headline is your
answer above, which is your February 11, 2011,
4:20 p.m. email?" Answer, "Yes." "And you
30 say...", question 2-1-9-7, "And you say, it's
good but better use show instead of prove. Under

state is best here." And then you suggest two possible headlines. So let's just, first of all, deal with the first sentence in your 4:20 p.m. email. Why is it better to use the word 'show' instead of the word 'proof'?" Answer, "Just give me a second. This question does not follow a previous answer of mine, so I object. And you've had this document for a long time in your possession, you could've asked me questions before." Two one nine eight, "Mr. Rancourt, first of all, you've been ordered to give an answer even if you object. Secondly, you have attached Tab 1-14, which I have now entered as Exhibit Number 58 to your written answers and you state on page 2 of Exhibit 37, I submit this document as an exhibit to support my instant answer." Answer, "Oui." Two one nine nine, "So, you must answer all questions I have for you about Tab 1-14." Answer, "Je..." Two, two, zero, zero, "I'm asking you..." Answer, "Oui." Two, two, oh, one, "...why is it better to use the word 'show' instead of the word 'proof'?" Answer, "I state in the text in English." Two, two, oh, two, "I'm not there yet. I'm in the first part of your sentence." Answer, "Yes, well, that's the answer." Two, two, oh, three, "I'm going to ask you why you say understate is best here in my next question." Answer, "And the answer to your question, it is the answer to your question because I was of the opinion that it was better to use a term that was less strong." Two,

two, oh, four, "And why were you of that opinion, Mr. Rancourt, to use a term that was less strong?" Answer, "I don't remember. Purely a question of choice." Two, two, oh, five, "There's no doubt about that, sir, but you are..." Answer, "*Je veux dire il y avait - j'avais pas de grande...*" Two, two, oh, six, "...advising Ms. Gervais to under state. Why?" Answer, "I didn't have a big theory or a big reason for it. It was just my reaction then and then. She was asking me for my feedback, for my reaction, and it's what I gave to her." Two, two, oh, seven, "Why would you care whether she used the word 'show' or 'prove'?" Answer, "For me, it was not something I was attached to. She could have chosen one or the other. You are using the word care. I was pretty much indifferent. I was just giving my feedback freely." Question 2-2-0-8, "Why is she asking you for what you think of her headline?" Answer, "You would have to ask her that. I don't know. I'm not in her head." Two, two, oh, nine, "That's your evidence, sir? It's your evidence that you do not know why she is seeking your advice on what the headline to her Exhibit 12 is going or to what is in Exhibit 12?" Answer, "Exactly. I will try the best I can to not try to say what's in other people's heads." Two, two, one, oh, "I'm not asking you for what is in her head. I want to know why she is reaching out to you as to what her headline should be for an

article that she's writing, not you?" Answer, "I do not know. I do not know her motives. You would have to ask her that." Question 2-2-1-1, "That's your evidence, sir?" Answer, "If you wanna know what she thinks, what her motives are, you would have to ask her that. I should not be the person you ask that to." Two, two, one, two, "I'm just giving you an opportunity here, Mr. Rancourt, and you're under oath..." Answer, "Oui." Question 2-2-1-3, "...to tell the truth." Answer, "Oui." Two, two, one, four, "And I'm giving you an opportunity, if you have knowledge of why you are being consulted by the Student Appeal Centre director about what title or headline she should use on an article she's about to publish on the Internet, then give me your knowledge and you are telling me you have no knowledge of why she is asking you what you think of that headline, have I got that right?" Answer, "I do not know what she thinks and I do not know her motives. I would have to guess and I think that would not be appropriate for me to do so." Two, two, one, five, "But it was appropriate for you to make a suggestion, wasn't it? So, you told her to use the word 'show' and she did, in fact, use the word show, correct?" Answer, "She did ask for a suggestion. That is, she asked for my reaction, my feedback, and it's what I did." Two, two, one six, "So, why did you, Mr. Rancourt, think that her headline was good?" Answer, "It's an opinion. It's a

question of style or clarity of language, nothing more than that." Two, two, one, seven, "How could you know whether that headline was good for the article she was about to publish if you didn't have the article?" Answer, "I guessed from the title what the content must be and I gave her my feedback accordingly." Two, two, one, eight, "No. I know you gave her feedback, sir. You were giving her feedback on a headline for a document she authored." Answer, "Yes." Two, two, one, nine, "And when you write headlines, it's based on the content of the article?" Answer, "Yes." Two, two, two, zero, "So, did you have knowledge of the content of her article, which eventually gets published and we have it as Exhibit 12?" Answer, "No." Two, two, two, one, "You had no idea, sir, and this is your evidence? I wanna make sure I'm understanding you a hundred percent clearly, Mr. Rancourt, that when you made a suggestion about the headline for Mireille Gervais' article that is at Exhibit 12, you did not know any of the contents of that article?" Answer, "Exactly." "So, as of 4:20 p.m. February 11, 2011, you did not have a clue what content was gonna follow the headline that you are making suggestions on content of?" Answer, "Exactly." Tab 8, 2-2-4-2, "Okay, so where are we? As of February 11, 2011, at 2:38 p.m., Mr. Rancourt, is you haven't read a word of Ms. Gervais' blog that we find at Exhibit 12, correct? That's your evidence?" Answer,

5 "Exhibit 12?" Question 2-2-4-3, "Yes, that's
your blog, Mr. Rancourt. You know what I'm
talking about, freedom of information documents
show Joanne St. Lewis' lack of independence from
central administration. So, as of 2:38 p.m.,
your evidence is you don't know what she's gonna
write because you haven't read it?" Answer,
"Well, I know from the title what the topic will
be." Question 2-2-4-4, "That's all you have,
10 right? Am I understanding your evidence
correctly? All you know about is what you see in
that headline?" Answer, "Yes." Two, two, four,
five, "Okay, as of 2:38 p.m. on February 11,
2011, you had no - not any knowledge of FIFA
15 documents that we would see that Ms. Gervais is
writing about in Exhibit 12 as of that point in
time, 2:38 p.m.? She hasn't shared them with
you, she hasn't told you about them, is my
understanding of your evidence as of this point
20 in time?" Answer, "I don't remember if she
mentioned there were such documents." Two, two,
four, six, "Oh! Well, when would that have
happened?" Answer, "I don't know when."
Question 2-2-4-7, "Again, a memory loss?"
25 Answer, "Yes." Tab 9, 2-2-6-6, "And why was that
your favourite headline, Mr. Rancourt, as you say
in your email to Ms. Gervais?" Answer or it's,
"*Et pourquoi est-ce que c'est temps?*" Answer, "I
30 didn't know what the content of the article, her
article would be." Two, two, six, seven, "How
could that be your favourite then?" Answer, "But

if it was going to indicate what I felt was important, so the point of saying this was that in my opinion at the time, the important thing were the actions of the upper administration, which were divulged in the FIPPA documents. It was to indicate that I felt that this was the aspect, the most important aspects that concerns her in her work." Two, two, six, eight, "'Her' being who?" Answer, "Mireille Gervais." Two, two, six, nine, "An administration cover-up?" Answer, "Yes." Two, two, seven, oh, "So, you're trying to convince Ms. Gervais to write something about a cover-up in a Student Appeal Centre news item?" Answer, "No, I'm giving my opinion." Two, two, seven, one, "Yes, because she asked you what you thought?" Answer, "Yes." Two, two, seven, two, "And why is that your favourite, sir?" Answer, "I just answered you." Question 2-2-7-3, "Why is it your favourite?" Answer, "The record will show that I already answered, so if you ask me the same question, I can tell you I will not answer any further." Two, two, seven, four, "You are telling the director of the Student Appeal Centre that you think the cover-up is the big malfeasance issue here and that's your favourite. What was the basis for you coming to that conclusion?" Answer, "I've already answered. It's in the record." Tab 10, 2-2-7-9, "Do you have any other documents besides the FIPPA documents as of 4:29 p.m., February 11, 2011, to base your email to Mireille Gervais on?"

5 Answer, "I never had documents other than those, than the FIPPA documents that were made public by Mireille Gervais." Two, two, eight, zero, "And those documents, the FIPPA documents are Exhibit 57, correct?" Answer, "Yes." Two, two, eight, one, "And Mireille Gervais did indeed go with your recommendation to use the word 'show' because at 4:39 p.m. or somewhat before that, she published Exhibit 12, which says freedom of information documents show Joanne St. Lewis' lack of independence from central administration." Answer, "Is this a question?" Two, two, eight, two, "Do you agree she accepted your recommendation to use the word 'show' instead of proof?" Answer, "I agree that the word 'show' is the one that appears in this title." Two, two, eight, three, "Did you have any conversation with Ms. Gervais after you sent your 4:20 p.m. email and when she published Exhibit 12?" Answer, "*Je crois pas, mais je peux pas être certain des détails.*" Tab 11, 2-2-8-9, "And who are the other top people that you refer to in your 4:20 p.m. email, other than Mr. Rock and Mr. Major? You see that sentence, 'Cover-up is the major wrong doing that directly implicates Rock and Major and other top people'? Who are the other top people?" Answer, "I don't remember. I can't go back to 2011 to remember exactly, but I suppose that they are the people mentioned in the FIPPA documents or perhaps I simply meant their entourage." Two, two, nine, oh, "Mr. Rancourt,

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as of 4:20 p.m., on February 11, 2011, what facts did you have knowledge of that Joanne St. Lewis was involved in a cover-up?" Answer, "I never thought and it was never my opinion that Professor St. Lewis was involved in any kind of cover-up, so the question is faulty." Two, two, nine, one, "So, it's your evidence, sir, that Joanne St. Lewis had nothing to do with any cover-up in relation to the 2008 Annual - SAC Annual Report?" Answer, "It is my opinion and my position and it has always been the case." Tab 12, question 2-2-9-7, "Page four, bottom of page four or sorry, that was 3A, sorry. Bottom of page three or top of page three, you give me tab 2A." Answer, "Okay." "So, let's enter that as Exhibit 59, is that correct?" The monitor, "Yes." Exhibit 59, a print-out copy of a two-page email sent at 7:29 p.m. on November 2nd, 2008 from Mireille Gervais to Denis Rancourt under the heading "Quick advice." The document bears a Gmail logo and is identified as Tab 2A of Exhibit Number 37. Question 2-2-9-8, "So, we are now going back to November 2 of 2008 and Ms. Gervais is writing you an email sent at 7:29 p.m. and it says, 'Do you think I'm missing anything?' And Mr. Rancourt, why is Ms. Gervais asking you if she is missing anything in the draft of a cover letter that she intends to send to the - President Rock and members of the administration?" Answer, "This question is not a follow-up question, admissible question, because

you've had this email for two years and you had more than seven hours to ask questions regarding this email. You did that already and I will no longer answer those questions regarding this document." Tab 13, 2-3-3-8, "So, Mr. Rancourt, you also have provided an answer in Exhibit 37 that you have not concluded that Professor St. Lewis was unprofessional. Quote, 'I have never made such a conclusion about Professor St. Lewis' work. Does that work include the evaluation that Professor St. Lewis did of the SAC's 2008 annual report?" Answer, "Yes." Tab 14, question 2-3-5-4, "Okay, but my question is, Ms. Gervais gave interviews about her 2008 SAC annual report and Professor St. Lewis gave interviews about her evaluation of that report. Was there anything improper or wrong with Professor St. Lewis doing media interviews?" Answer, "Each person contributes with reports and media interviews and each person can be criticized with opinion." Question 2-3-5-5, "It's not an answer to my question." Answer, "So, your question is a question that is..." Question 2-3-5-6, "Was there anything improper in Professor St. Lewis providing a media interview about her evaluation of the SAC report? Anything improper, sir?" Answer, "I cannot - I don't want to use your word 'improper'. I don't want you to put words in my mouth. I've already said what I had to say in my articles. The jury will decide the meaning of these articles and I don't have to accept your

words in my mouth." Two, three, five, seven,
"I'm not putting words in your mouth. I'm asking
you a question. Yes or no, was there anything
improper about Professor St. Lewis doing media
interviews about her evaluation report, yes or
no?" Answer, "I won't use the word 'improper'.
I've already said and I've qualified it very
attentively in my articles and I don't want you
to put my interpreter *pouvez-vous répéter, s'il*
vous plaît? The witness, 'I don't want, I don't
want to answer this question because it obliges
me to use the word 'improper'." Question 3-3-5,
or 2-3-5-8, "No, you have to answer the question
and it's my question, was there anything wrong -
was there anything improper, anything illegal
about Professor St. Lewis providing media
interviews about the report she wrote? It's a
pretty simple question, Mr. Rancourt." Answer,
"It seems very clear to me that there was nothing
illegal." Two, three, five, nine, "Was there
anything that you are aware of in the rules of
the university, the policies of the university,
that would prohibit Professor St. Lewis from
giving media interviews of her - about a report
she authored?" Answer, "Absolutely not.
Professors have a right to free expression."
Unless you lose your voice, which I am doing.
Excuse me. Tab 15, question 2-3-7-0, "Please
answer my question. Are you calling Professor
St. Lewis intellectually dishonest when she wrote
her 2008 evaluation report?" Answer, "No." Tab

16, 2-4-4-0, "Prior to publishing your December 6th, 2008 blog, I put it to you, sir, that you did not contact Professor St. Lewis to give her an opportunity to respond to what you published, correct?" Answer, "I did not contact Professor St. Lewis about my blog article before publishing the blog article of December 6th, 2008." Question 2-4-4-1, "And the same thing with the February 11, 2011 blog? Prior to publishing your February 11, 2011 blog, you did not give Professor St. Lewis an opportunity to respond to what you were publishing before you published it, correct?" Answer, "No, because the article of December 2008 had essentially the same content." Two four, four, two, "In your dreams." Answer, "I'm giving you my answer. You do what you wish with it." Two, four, four, three, "Did you, before you published your February 11, 2011 blog, Mr. Rancourt, give Professor St. Lewis an opportunity to defend..." it says yourself "...by you calling her a house Negro, yes or no?" Answer, "I did not show the content of the blog of February - 11th of February, 2011 to Professor St. Lewis before publishing it." And Your Honour, I just wanted to read in two other passages that are not in exhibit - the exhibits we've put in, which will go to you making a ruling on the emails. I think we have it all in here, but just in case we don't, so there's a question 2-2-3, on page 7-11...

THE COURT: I'm sorry, where are you?

MR. DEARDEN: I'm in - page 7-11...

THE COURT: Of which one? I'm sorry...

MR. DEARDEN: It sounds like a convenience store.
It must be the third volume. So, July, or August
16, page 7-11, question 2-2-3 through to 2-2-5,
Your Honour, is what I want to read in there.

THE COURT: Okay.

MR. DEARDEN: "And so at this point, too, Mr.
Rancourt, you would have not had the knowledge of
all or part of the FIPPA documents that Ms.
Gervais was going to attach a link to this
Exhibit 12, correct?" Answer, "I'm not certain.
It's possible that in receiving this email at
4:20 p.m. on February 11..." Two, two, four, "I
think you mean 2:38 p.m." Answer, "Yes." Two,
two, five - 2-2-2-5, "You sent this email of
4:20?" Answer, "I'm sorry, you're right." So,
that covers that - those two emails, Your Honour.
And then in the first volume, so the April 30th
volume, Your Honour, page 1-31, question 3-72,
"Well, you produced this document, Mr. Rancourt,
which we entered as Exhibit 8, right? Did you
enter this or Exhibit 6? That's what he's got,
right? Okay? You can mark my copy." Exhibit
Number 6, a copy of an email chain between
Mireille Gervais and Denis Rancourt, dated
November 2nd, 2008 at 9:36 p.m. Witness, - I'm
not sure if this is trans - "So, if I understand
correctly, this email of November 2nd, 2008, 9:36
p.m. was sent by Mireille Gervais to Denis
Rancourt and I've produced that email and the

5 email says, 'Thank you. I will send tomorrow morning. I am happy with the cover page.' Question 3-73, "No, I'm not there yet, Mr. Rancourt. I'm in the email below." "I'm happy with the cover page, Mireille" is in quotes. "C'est envoyé the 2nd of November, 2008 and there's an attachment but I don't have any memory. No, but I want to know the exact nature of your question. 'I'm happy with the cover page, Mireille.' It was sent November 2nd, 2008 and there's a detachment [sic] but I have no recollection of having noticed it or opened it, whatever. There you go." So, that covers those emails, Your Honour. And he says it was sent. 10 He just didn't open the attachment. So, Your Honour, in terms of what we have left to do, I think we should ask the jury to be excused for a few minutes where we deal with the Volume 3 that was marked as an identification and then I need to address the admissions, 'cause I have the documents you wanted to see for that and then we could bring them back in and that would...

15 THE COURT: Okay. So, if you want to retire for a few minutes, please?

20 CLERK REGISTRAR: All rise.

25 ...JURY EXITS (2:49 p.m.)

30 MR. DEARDEN: So, Your Honour, I'm gonna hand up to you a document called, "Read-ins for Volume 3 of the Book of Exhibits" and if you have handy, Your Honour, the exhibit for identification which...

THE COURT: Yes, I have that.

MR. DEARDEN: ...is the Book of Exhibits of Professor St. Lewis, Volume 3. So, the one we just handed up to you, Your Honour, what we've done is in tabs matching the emails that we find in the Book of Exhibits marked for identification, is we've given you the page numbers where it's clear that the email was sent or received. So, it's in - those are the - and I've read in - I've now read in all of those passages. I've now read in all of those passages, which we've put in the right hand column to match the emails exchanged between Ms. Gervais and Denis Rancourt except for number eight, which was something about, you know, the fulcrum's pathetic. We've pulled tab number eight from the exhibit marked for identification, 'cause we couldn't find a match in the read-ins for Mr. Rancourt saying, "Beautiful. Again shows how pathetic the fulcrum is." So, we've yanked that.

THE COURT: So, what are you proposing, that we use this read-in volume?

MR. DEARDEN: Well, the read-in volume - Your Honour, you wanted to know that we had in evidence that Mr. Rancourt received or sent the 10 emails that were in the identification exhibit.

THE COURT: Yes.

MR. DEARDEN: And these read-ins prove that all of them but one were received or sent by Mr.

Rancourt in this exchange between Gervais...

THE COURT: Yes. Yeah, I followed that when you were reading. I was looking at the emails. And I'm satisfied that there is sufficient evidence to identify the emails. I'm just wondering how do you want to proceed? Do you want to use, then, not the - or the one for identification but this new document?

MR. DEARDEN: No, I want to have now marked as an exhibit the one that we've marked for identification.

THE COURT: But we'll have to remove eight.

MR. DEARDEN: We did.

MS. SEMENOVA: Yes, we did.

MR. DEARDEN: We did.

THE COURT: Oh, okay. Not from yours, 'cause we didn't have yours. But...

THE COURT: Okay.

MR. DEARDEN: ...the ones the jury...

THE COURT: Okay, but I just want to make sure, okay.

MR. DEARDEN: ...removed eight.

THE COURT: That's fine. It can be introduced then. And you can point out to the jury what it is, refers to emails.

CLERK REGISTRAR: And that'll be Exhibit Number 29.

EXHIBIT NUMBER 29: Book of Exhibits (Professor St. Lewis) Volume 3 - produced and marked.

MR. DEARDEN: So, when the jury returns, we will give them - and, Your Honour, I also should have

5 handed up to you the full response that Mr.
Rancourt sent to me on his undertakings, 'cause
remember, I read in issue number six and the
attachments that he sent just for - so you have
the full document for your satisfaction.

THE COURT: Did we enter exhibit, an Exhibit A in
the *voir dire*? Have we entered any lettered
exhibit yet?

CLERK REGISTRAR: No, Your Honour.

10 THE COURT: Okay, so this is - we will file this
read-in book here that was submitted to convince
me of allowing the admission of the - we'll have
this as Exhibit A. So, the lettered exhibits do
not go to the jury, you understand that, I
15 assume? And B will be the - what I've just been
produced here.

MR. DEARDEN: Which is...

THE COURT: The response to the undertaking.

MR. DEARDEN: ...the email from - yeah.

20 THE COURT: So, that will be Exhibit B.

EXHIBIT A: Read-ins for Vol. 3 of Book Of
Exhibits (Professor St. Lewis)- produced and
marked.

25 EXHIBIT B: Email from A. Semenova to M.
Delahunt, May 22, 2014 - produced and marked.

THE COURT: And the exhibit that was, as
modified, that was originally filed during - with
Professor St. Lewis' examination simply as an
exhibit for identification will now be Exhibit 29
30 then.

MR. DEARDEN: Yes, and that's Volume 3, Book of

5 Exhibits (Professor St. Lewis). Wait till the jury comes back. And the last housekeeping matter, Your Honour, is the admissions. So, what I've done, Your Honour, is I will hand up to you the original, first of all, the request to admit Volume 1 and Mr. Rancourt's original response to me of the request that he admitted the truth of the facts of.

10 THE COURT: How do you propose to do this? Did you prepare something separate?

MR. DEARDEN: I haven't, Your Honour. I re-did the summary that I handed up to you yesterday and I've restricted it to purely his responses, what he admitted the truth of the facts to in paragraph one, under the heading Volume 1...

15 THE COURT: That is one to eight, et cetera?

MR. DEARDEN: Yeah, one to eight, 13, yeah, right through to 1-08. So - and I - and you'll see that I've cited the volume number that matches my request.

20 THE COURT: A lot of these are already answers given in the read-ins?

MR. DEARDEN: Yeah.

25 THE COURT: All right, we can proceed in this fashion. File this as an exhibit, of the admission, in front of the jury then.

MR. DEARDEN: And can we mark, Your Honour, as a lettered exhibit my request to admit Volume 1, and then another lettered exhibit, the response of the defendant?

5 THE COURT: Yeah, those will be D and - what do we have, B up to now? Yeah. So, that'll be, the request will be C and the response will be D then. So, I'll give that - do you have copies or no? You'll have these?

CLERK REGISTRAR: Only those copies.

THE COURT: Okay, so I'll, that'll be C and this will be D.

10 MR. DEARDEN: I have extras.

CLERK REGISTRAR: You do?

MR. DEARDEN: Yeah.

THE COURT: But I don't really need them.

MR. DEARDEN: Yeah, the originals are here.

15 THE COURT: I don't really - I'll go with the admissions there. I don't need them, those particular documents.

EXHIBIT C: Request to admit Volume 1 - produced and marked.

20 EXHIBIT D: Admissions the defendant made May 1, 2014 to Professor St. Lewis' request to admit - produced and marked.

THE COURT: And that will - once we file this in front of the jury, it will be then Exhibit 30.

25 MR. DEARDEN: Well, I think we were going to enter - yes, that's right, 'cause we're gonna enter in front of them the Book of Exhibits, Volume 3, Exhibit 29.

30 THE COURT: Yeah, and we'll enter before the jury Exhibit 30, admissions, which are this. Exhibit 30. Yeah. All right, let's bring back the jury then.

CLERK REGISTRAR: Do you have Exhibit B?

THE COURT: A, B - B is here.

CLERK REGISTRAR: Okay, perfect.

MR. DEARDEN: Mr. Registrar, do you have a copy
of the admissions? It would be 30.

CLERK REGISTRAR: Thank you.

THE COURT: If we want to avoid papers, I'll
simply keep the one to be identified as 29 and
I'll take out 8 myself. So, we've got - we have
- I have enough books here.

CLERK REGISTRAR: All rise.

...JURY ENTERS (3:00 p.m.)

COURT REGISTRAR: All members of the jury are
present, Your Honour. You may be seated.

THE COURT: All right, let's proceed.

MR. DEARDEN: So, Your Honour, can we enter as
Exhibit 29 the Volume 3 of the Book of Exhibits
of Professor St. Lewis?

THE COURT: You may recall, ladies and gentlemen,
that when the plaintiff was testifying, a book
containing emails was introduced or was about to
be introduced and I wanted to obtain additional
information about the admissibility of these
email and I have now satisfied they're
admissible, so they - and they're basically the
email - most of those are emails that were
referred to in the read-ins that you just heard.
So, that'll be Exhibit 29 then.

MR. DEARDEN: And Exhibit 30, Your Honour, will
be the admissions that the defendant made on May
1st, 2014 to Professor St. Lewis' request to

admit. There are 31 admissions listed in the summary.

EXHIBIT NUMBER 30: Admissions the defendant made May 1, 2014 to Professor St. Lewis' request to admit - produced and marked.

THE COURT: I will have something to say about admissions when I give you my final charge but basically, parties may agree, admit certain facts to - which at that point, may not be proven any other way. For the jury, you simply accept those, the facts that are admitted by the parties and any admissions as having been established but I'll say a few words about this when I give you my final charge. So, is that the end of the evidence for the plaintiff?

MR. DEARDEN: It is, Your Honour.

THE COURT: So, as we mentioned then, you're off until Monday, in 10 days and we'll see then at that time, you will be - Mr. Dearden will give you his final submissions and I will then give you my charge, likely on the Tuesday morning and then it will be up to you to take all of this and then work hard to deliberate and decide what is the proper verdict here. So, we'll see you Monday the 2nd of June.

MR. DEARDEN: And Your Honour, just before the jury leaves, could the record reflect that the defendant, Mr. Rancourt, is not here. The defendant has put in no evidence. So, that's the evidence.

THE COURT: No, I didn't - you're right. It

should possibly be put on the record, not having any eyes here, but obviously, I'm not calling on the defend - any evidence from the defendant. Defendant has not been here since he left last...

MR. DEARDEN: Friday.

THE COURT: ...Friday morning. All right. Thank you.

CLERK REGISTRAR: All rise.

...JURY EXITS (3:05 p.m.)

THE COURT: So, we'll meet tomorrow then with your proposed questions?

MR. DEARDEN: Yeah, we can do that, Your Honour, but I have a couple of preliminary matters.

One's easy and that is, for the closing address that I do, I'm seeking Your Honour's permission that I can prepare a compendium. You see, I like compendium, of some of the key documents that I want to refer to them during the closing address. So, it'll be entered exhibits only, of course, but it'll be a lot easier to follow the closing if...

THE COURT: And there will be a reference so that they know exactly what, in the documents that were actual exhibits, what they are and...

MR. DEARDEN: Yeah.

THE COURT: ...it will be easy for them to follow if they use it. I don't want them to be in any difficulty in not being able to refer to something else if they want to. So, make sure it's very clear though, that what it refers to, so that they can easily use it.

MR. DEARDEN: I will. So, if I'm referring to Volume, you know, 3 of professor, 3, Tab 5 of Professor St. Lewis'...

THE COURT: Yeah.

MR. DEARDEN: ...book of documents, I'll say it's Exhibit 29, you know, volume whatever - we'll identify where it is in the record.

THE COURT: That's fine. As long as it covers only evidence that has been introduced, that's fine and that it's clear.

MR. DEARDEN: So, Your Honour, that's - so I have permission to do that?

THE COURT: Yes, you have.

MR. DEARDEN: Thank you. Your Honour, I found something troubling after lunch when I went back at lunch today and we're gonna show it to you on the screen and I have a copy of it, as well. And other - there's some other matters I want to raise with you and this is all centering around, you know, the R-1 Exhibit that you entered on this letter that was sent to Regional Senior Justice McNamara, May 20th, that I was not given a copy of and Mr. Rancourt taking the absurd position that, "In the interest of justice, I have withdrawn my presence from the trial in order not to be used as a prop that would make it look to the jury as if I were being allowed to defend myself but I have not withdrawn my witnesses." I was alerted today that Cynthia McKinney, who was one of the so-called experts that I was going to challenge her qualifications

and independence drastically about, has started a petition on a website. What's the name of it, Ms. Semonova?

MS. SEMONOVA: Change.org.

MR. DEARDEN: And can we change - can we turn that TV so that Justice...

MS. SEMONOVA: Yeah.

MR. DEARDEN: ...Charbonneau can see it? So, this is change.org, petition by Cynthia McKinney, and she says she's "Involved in this case because a terrible wrong has been committed and I want to see justice. I'm standing up for a professor who stood up for University of Ottawa students and then got fired for doing so. Help me stand up for justice by supporting Professor Denis Rancourt, what's happened and here's how you can help." Can we scroll up, please?

MS SEMENOVA: Yeah.

MR. DEARDEN: Okay, so, "Denis Rancourt is a former tenured Physics Prof at the University of Ottawa who was fired in 2009. He ran a U of O Watch Blog critical of the university administration and created popular activism courses for social change. In 2011, the University of Ottawa sponsored a defamation lawsuit against him after he had defended a student report that accused the university of racial discrimination. The lawsuit is about a blog article of U of O Watch in which Dr. [sic] Rancourt concluded correctly it turned out..." that's completely false - "...that the university

5 president had asked a black professor to criticize a student report." And she's posting Hazel Gashoka video there, Your Honour that is, in my view, worse than what Mr. Rancourt wrote. She's calling Joanne St. Lewis house Negro. They've posted this at the top of this petition that's gone to Beverly McLaughlin, James McNamara and I think there was one other person, but we'll come to the letter in a second.

10 MS. SEMENOVA: There is.

MR. DEARDEN: Oh, yes, Alexander Hoy, the ACJ of the Court of Appeal, Heather Smith, the Chief Justice of the - of this court and, of course, Regional Senior Justice McNamara. And I want to continue reading, please.

15 MS. SEMENOVA: Mm-hmm.

MR. DEARDEN: "The petition is to protest an Ontario Superior Court judge's decision of May 15th, 2014 to summarily toss out Dr. Rancourt's legal defence during his opening statement to the jury in the defamation lawsuit funded by the University of Ottawa to silence him. The judge, Michel Z. Charbonneau is an alumnus of the university and an annual donor to the institution. In any justice system, a judge cannot be or appear to be biased and each party is entitled to a fair hearing. A fair hearing means that a defendant must know the charges against him and must know the defences available to him. In this case, after more than three years of legal procedures, the judge summarily

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discarded Dr. Rancourt's main defence without any valid justification when asked to do so by the opposing party in the middle of Dr. Rancourt's opening statement to the jury. The off the cuff gagging of Dr. Rancourt, by the judge during the opening statement to the jury, was so egregious that the professor walked out of the trial in express protest so as to not further legitimize the unjust hearing. Under Canadian law, the trial is continuing in his absence. The university president who fired Professor Rancourt and who asked for the criticism of the student report is a former Liberal Party of Canada federal minister of justice and a witness at the trial. Prior to trial, Mr. Rancourt, who is self-represented, had asked then Regional Senior Justice Charles Hackland, who resigned on May 8th, 2014 to name a case judge who had no connection with the University of Ottawa and made a formal motion for the trial judge to recuse himself because of the judge's shared interest with the University of Ottawa. Dr. Rancourt's defence was introduced more than three years prior to trial and had been scrutinized in detail and allowed only to be abruptly cancelled while Dr. Rancourt was presenting it to the jury. Help defend justice by signing this petition, telling the National, Provincial and Regional Chief Justices of Canada to stop the trial against Dr. Rancourt and start again with a judge that has no ties to the University of Ottawa." Then we have to

Chief Justice Beverly McLaughlin, Associate Chief Justice Hoy, Chief Justice Smith, and R.C., R.S.J McNamara. "We undersigned..." so this is the petition to them, "We, the undersigned, wish to express our grave concern about the ongoing Ontario Superior Court of Justice unjust treatment at trial of Dr. Denis Rancourt by the trial judge, summarily tossing out Dr. Rancourt's main defence while Dr. Rancourt was explaining it to the jury. This is an egregious anomaly and an affront against justice in Canada. The circumstances are such as to put Canadian courts into disrepute. The defendant asked then Regional Senior Judge Charles Hackland to name a case judge who had no ties to the University of Ottawa, had made a formal motion for the trial judge to recuse himself because of the judge's shared interest with the University of Ottawa and had successfully defended his main defence in the pre-trial motion. The trial judge's, in court behaviour, in allowing the defendant's Statement of Defence to be edited on the fly by the opposing party during the defence - defendant's opening statement to the jury is a shocking affront against basic justice. This attempt to railroad Dr. Rancourt in his defamation trial is a disservice to all justice-seeking citizens. As such, we, the undersigned, ask the Canadian judicial system to uphold its commitment to justice and to the citizens of Canada by allowing a new trial with a judge who has no ties to the

University of Ottawa or to the Liberal Party of Canada." Continue. "Give a fair court hearing to Denis Rancourt, sincerely, your name."

There's 50 signatures so far, Your Honour. So, first of all, note that the Ontario Civil Liberties Association endorses the petition. Ontario Civil Liberties Association has nothing to do with the Canadian Civil Liberties Association, Your Honour. It is an unincorporated organization named by Mr. Hickey sitting over there, Mr. Rancourt, Mr. Rancourt's daughter and some other people. It is a fly by night organization. It has no corporate identity whatsoever and they, though, do have a website that they've been actively using to attack Professor St. Lewis and they - he is sitting here and he is signing this petition, which talks about public money's not for silencing critics. That's what they put up. Mr. Rancourt has signed this petition. Adele Mercier, sitting with us still today, has signed this petition and many others have put their name on this. Denis, Jeff Schmidt, there's our friend, Jeff Schmidt there. There's Denis Rancourt, "I support this petition about me seeking a just process in the courts. The jury needs to hear my full defence including that the lawsuit is an abuse of process because the university is funding it without a spending limit and because of the nature of the claim. In my opinion, I've been subjected to an egregiously wrong process, so egregious that I cannot

legitimize it by my presence in court." Your Honour, I submit that this is absolutely contemptuous, what they're doing here. It clearly - there was an orchestration the other day where Adele Mercier came up and said I want to give evidence. Hazel Gashoka, which has - who has absolutely nothing to do with the events involved in this libel action similarly made a statement. It's all a circus. And - but it's an orchestrated circus and they're doing this and I have a jury. I have a jury that's still sitting and they're doing it to try to prejudice that jury. And I have additional - I would like Your Honour to first of all, accept as a lettered exhibit - now, you had used the R letter for the letter that Mr. Rancourt sent on May 12th...

THE COURT: Well, if it has to do with this again, we'll make this R2.

MR. DEARDEN: So, R2 is a printout of some of what we've just shown on the screen and we'll hand that up.

EXHIBIT R2: Give a Fair Court Hearing to Denis Rancourt Printout (9 pages) - produced and marked.

THE COURT: So, obviously it's not all of what you read here? Or is it?

MS. SEMENOVA: No, it should be.

MR. DEARDEN: Did we get it all in here?

MS. SEMENOVA: It should be all in here, yes.

THE COURT: Okay.

MR. DEARDEN: Okay, so we, yeah, we think we've

got it all. Except, of course, you don't have what Hazel Gashoka said on that video, so it's not showing Hazel Gashoka's video that they have at the top of this so-called petition.

MS. SEMENOVA: Right, but the comments are all there.

MR. DEARDEN: But the comments are all here. So, that's R2, Your Honour. But in addition, you recall last Friday, when Mr. Rancourt walked out and abandoned his right to participate in this trial and not put any evidence in, he - there was an Ottawa Citizen article that went online that evening where Mr. Rancourt called this court a Kangaroo Court. And I want to...

THE COURT: Well, I saw that in the Citizen. That was in the Citizen.

MR. DEARDEN: Yeah. So, it went online on the Friday night, Your Honour, and but then it also made its way into the print edition, Saturday edition, which is the biggest circulation day of the paper. So, I'd like R3 to be, Rancourt Walks out on Kangaroo Trial, a May 16th, 2014, Don Butler article, which went online. And the print edition, I'm actually handing you the actual print edition, the pages that that article was published on the Saturday as R4.

EXHIBIT R3: Printout Of "Rancourt Walks Out On Kangaroo Trial" (2 pages) - produced and marked.

EXHIBIT R4: Ottawa Citizen Article "Rancourt Shuns Kangaroo..." May 17, 2014 - produced and marked.

MR. DEARDEN: But it didn't stop Mr. Rancourt, 'cause he also decided on Saturday, May 17, Your Honour, to put on U of Watch Blog an article entitled, "Why I walked out of the trial in which I am being sued." And he says, "On May 16, 2014, at 10:00 a.m., in courtroom number 36 of the Ottawa courthouse of the Ontario Superior Court of Justice, I walked out from the trial in which I am being sued in which I was representing myself without a lawyer. The trial is continuing in my absence before a jury of my peers. This is my translation from the French of what I said to the court, to Justice Michel Charbonneau, to explain my reasons for leaving the trial process." So, he's put an English version of his - the statement he made on Friday up on his U of O Watch Blog and Your Honour, I submit that it's - that his conduct is contemptuous. It's prejudicial to the jury that is to - has yet to decide this case, 'cause he's calling this court a Kangaroo Court. He's saying that you're biased and it's a fake process, part of what he was quoted to the Citizen saying, which I did not recall him saying here, was it's a fake process and it's insane. I don't recall him saying that, either. And I certainly don't call - recall him saying it's a Kangaroo Court but he did it in interviews with the Citizen and he's publishing online and now he's, obviously, involved with this petition of - generated out of the United States of America and the comments are

incredible. Like, they - most of what I was able to go through at lunch time when this was drawn to my attention, the comments absolutely believe that he, you know, he is in a Kangaroo Court and didn't get a fair trial and that you're biased. It's amazing but it's disgusting, too.

Absolutely disgusting. What they've done - what they're doing. And they don't care. They don't care. This is - so anyway, Your Honour, I - I'm putting on record this is absolutely contemptuous. Obviously, I don't want the jury to know about any of this. I hope they don't learn about any of this, but it sure is why they're doing it. They're trying to prejudice this jury in his favour. So, those are my submissions on that, Your Honour.

EXHIBIT R5: U of O Watch article "Why I walked out..." May 17, 2014 - produced and marked.

THE COURT: Well, you're probably right that that's the purpose. I mean, obviously, because the right thing to do is if there is not a fair trial or if I should have recused myself, all of those are proper grounds of appeal and a Court of Appeal will order a new trial later on, if that's true. I mean, to do it in the media doesn't change anything. So, I don't know exactly. I'll take this under - I - the more concern I am is whether this jury will be prejudice. I don't quite, to tell you the truth, I don't - all of these accusation, we're used to hearing all kinds of accusation from people but it is obviously

contemptuous in the sense but I don't know what I want to do with it.

MR. DEARDEN: And I'm not asking Your Honour to do anything with it now. I'm - and it - we'll re-visit that another day, like, after the verdict is rendered. I'm just putting it on the record now because I just discovered it.

THE COURT: Yeah.

MR. DEARDEN: And the last thing I'd like to put on the record, as well, Your Honour, because I had a pretty good idea of what they think that their game plan is here in terms of appeal and where they're going next. You had a number of improper interventions by Adele Mercier and I indicated to you that I was challenging her qualifications big time, as not independent whatsoever in terms of how well she knows Mr. Rancourt and the support she's given Mr. Rancourt the past three years in his labour grievances, in, you know, all kinds of things. I've copied or made a book, an Adele Mercier book that has nine examples of what I would have put to her in cross-examination on her qualifications to testify as an expert and I would like this in the record in case somehow Adele Mercier becomes a reason why they think there's some appeal here. I, of course, didn't have the ability to do this because Mr. Rancourt abandoned his defence and didn't put her on as a witness, which was his voluntary choice. So, I'd like that entered as a - probably an R exhibit as well.

THE COURT: No, it'll be a - we can put as an R exhibit, the next R exhibit, then.

CLERK REGISTRAR: So, that would be R6.

EXHIBIT R6: Adele Mercier Book, May 23, 2014 -
produced and marked.

THE COURT: They're all for the same purpose and they can be looked at some day by an appeal court or whatever.

UNIDENTIFIED FEMALE VOICE FROM BODY OF COURT:

Monsieur, le juge, est-ce que je peux...

LE TRIBUNAL : Non, je veux pas vous entendre, madame.

INTERPRETER: No, Your Honour.

LE TRIBUNAL : Merci.

INTERPRETER: I don't want to hear you. Ma'am, sit down.

MR. DEARDEN: So, Your Honour, that - those were the other matters that I wanted to draw to your attention.

THE COURT: All right, so we'll meet tomorrow to review the - to go over the questions.

MR. DEARDEN: Yes, can we say, like ten thirty, Your Honour? Does that work?

THE COURT: We can do it at 11:00 if it's - if it's even better.

MR. DEARDEN: Okay, well...

THE COURT: We can do it at 11:00, yeah.

MR. DEARDEN: Is that okay?

THE COURT: Yes?

MS. SEMENOVA: I can come at 11:00.

THE COURT: Yes. Yes, yes, oh, yes. Oh, yes.

Yes, we have - everybody comes back except the jury tomorrow and we will - yeah. Thank you.

MR. DEARDEN: Thank you, Your Honour.

...WHEREUPON THESE PROCEEDINGS WERE ADJOURNED

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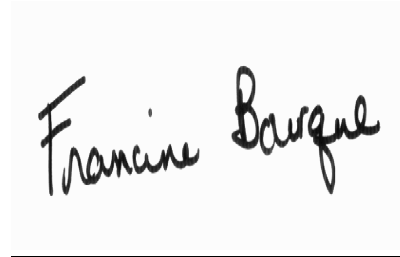
1.
Certification

FORM 2
Certificate of Transcript
Evidence Act, Subsection 5(2)

I, Francine Bourque, certify that this document is a true and accurate transcription of the recording of Joanne St. Lewis v. Denis Rancourt in the Superior Court of Justice held at Ottawa, Ontario taken from Recording(s) No. 0411_CR36_20140522_094033, which has been certified in Form 1 by R. Commodore.

November 23, 2014

(Date)



(Signature of authorized person)

Videoplus Transcription Services ACT number 5542650147

SUPERIOR COURT OF JUSTICE

B E T W E E N :

JOANNE ST. LEWIS

Plaintiff

and

DENIS RANCOURT

Defendant

P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE JUSTICE M. CHARBONNEAU
on May 23, 2014, at OTTAWA, Ontario

APPEARANCES:

R. Dearden

Counsel for the Plaintiff

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WITNESSES:

Examination
In-Chief

Cross-
Examination

Re-
Examination

-

-

-

-

E X H I B I T S

EXHIBIT NUMBER

ENTERED ON PAGE

R7 U of O Watch blog of May
22, 2014

5

Transcript Ordered:

July 4, 2014

Transcript Completed:

November 23, 2014

Ordering Party Notified:

November 23, 2014

1.
Joanne St. Lewis v. Denis Rancourt
Submissions by Mr. Dearden

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WEDNESDAY, MAY 23, 2014

THE COURT: Good morning.

MR. DEARDEN: Good morning, Your Honour. Your Honour, one housekeeping matter. Can we release the translators, 'cause I don't - I have no need for the translators today.

THE COURT: Okay. Unless somebody, some newspaperman or something wants.... No?

MR. DEARDEN: It's gonna be all in English.

THE COURT: Eh?

MR. DEARDEN: We're gonna be speaking in English.

THE COURT: That's right. Oh, yeah, yeah, yeah, that's true. Then nobody's going to be - okay. That's true. Sorry about that.

SUBMISSIONS BY MR. DEARDEN:

MR. DEARDEN: So, Your Honour, unfortunately, I have another preliminary matter to deal with, as I did yesterday. I'm gonna hand up to Your Honour, a U of O Watch post that Mr. Rancourt posted yesterday evening around ten o'clock, entitled, "Why did Regional Senior Judge Charles T. Hackland resign on May 8, 2014?" I'll just hand that up. I'd ask that it be entered as Exhibit R7. And in my submission...

THE COURT: There is a - just hold on for a second. There's also - oh, I see, so, the rest was linked? Is that why they're all together, or...

MR. DEARDEN: Yeah, what he did is, he has this, "Why did Regional Senior Judge Charles Hackland

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resign on May 8, 2014" and then at the end of
that article, he says, "Is it reasonable for me
to have had - have a 'reasonable apprehension of
bias' (a legal term meaning a good reason to seek
a judge's recusal.)" And then he says, "Cynthia
McKinney thinks so." And you have the link, and
we reproduced the...

THE COURT: Oh, I see.

MR. DEARDEN: ...link, Your Honour.

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THE COURT: I see.

MR. DEARDEN: And...

THE COURT: So, it's all there also again a
second time about the...

MR. DEARDEN: Yes.

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THE COURT: Okay.

MR. DEARDEN: So, this was - but I just want to
point out, Your Honour, so what's been linked in
association with a clearly defamatory article of
the former Regional Senior Judge Hackland, full
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of lies, is leading it with Hazel Gashoka's
defamatory video of Professor St. Lewis and then
you have a number of defamatory and false
statements that are made in the petition itself,
which I read in yesterday and the petition, of
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course, going to the Chief Justice of Canada and
other chief justices and associate chief justice
and the regional senior justice of this region
but they've reproduced the Ottawa Citizen
article; they've reproduced a - Mr. Hickey, who
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is with us again today, a Civil Liberties
Association endorsing the petition and then

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Submissions by Mr. Dearden

linking, "Public Money Is Not For Silencing Critics", which was another attack on - and failure to realize that the Champerty motion was dismissed all the way up to the Supreme Court of Canada, reproduced "Rancourt Walks Out Kangaroo Court" and then a number of comments that attack you in what you've done in this case. For instance, "Justice Charbonneau is in conflict of interest and should have recused himself. It's a biased trial, a blatantly political case of silencing critics of corrupt establishment." Rancourt himself has put a comment on this petition, Mr. Hickey has, Adele Mercier has, who is again with us today. Another comment here I'm looking at, "Charbonneau's behaviour is disgraceful and unjust and the injustice should be corrected." You got on 12 of 19 - page 12 of 19, that's when you see Jeff Schmidt from Washington saying, "The judge regularly gives money to the sponsor of this repressive legal action against Denis. The court isn't even pretending to be fair." Then Rancourt's comment is below that. Then, Hazel Gashoka's comment is below that. Joseph Hickey is on the next page, 13 of 19. And then, linking the so-called Ontario Civil Liberties Association campaign about this case, "Public Money is not for Silencing Critics." Claude Lamontagne, who was the so-called expert that said - that's saying somebody was a house Negro wasn't racist, one of Mr. Rancourt's early so-called experts. Page 15

4.
Submissions by Mr. Dearden

of 19 is Adele Mercier, "Canadian defamation law is full of problems, not the least of which is the absence of the presumption of innocence. The least that a defendant should be able to expect is a fair trial devoid of even an appearance of partiality and bias, all the more so when the defendant is a self-litigant." And they have now over 108 people, from what we saw, that have signed this petition, a number from Ottawa, some from the U.K., United States. This, Your Honour, in my submission, is intended to prejudice this jury. It's contemptuous, in my respectful submission. It clearly - clearly Mr. Rancourt's doing this on purpose to prejudice this jury. I would think it would be fair to assume that Mr. Hickey or Ms. Mercier would have informed Mr. Rancourt of proceedings yesterday that they attended, that I took the position that what had been published yesterday was prejudicial to the jury and then he deliberately runs this false and defamatory article about the former regional senior judge. Now, again, Your Honour, I'm not asking the Court to do anything now; same position as yesterday. I want to await the verdict, get instructions from Professor St. Lewis after the verdict but I'm putting on record that this is out of control. It is contemptuous, it's prejudicial, it is shocking to my conscience, any way, it's shocking what they're doing and it almost seems like they're enjoying it. We're in some kind...

THE COURT: I'm sure...

MR. DEARDEN: ...of cartoon here.

THE COURT: I'm sure they are.

MR. DEARDEN: Are we in some kind of cartoon here? No, we aren't. This is real world and they're doing this and it's just shocking. At any rate, Your Honour, if I could enter the U of O Watch Blog, May 22, 2014, "Why did Regional Senior Judge Charles T. Hackland resign on May 8, 2014" and the link that it - he set up to Cynthia McKinney's petition as Exhibit R7, please?

THE COURT: All right. I don't need a copy of this, Mr. Registrar, if you have an extra copy. Just use this one. I'm not interested in that.

EXHIBIT R7: U of O Watch blog of May 22, 2014 - produced and marked.

MR. DEARDEN: So, Your Honour, the issue at hand, I've done two things or - I've got draft questions for the jury dated today, which I can hand up, Mr. Registrar. Do you need a copy, too?

CLERK REGISTRAR: I think so.

MR. DEARDEN: Okay.

CLERK REGISTRAR: Thank you, Mr. Dearden.

MR. DEARDEN: But Your Honour, what we're working on and will get over to you this afternoon is a short factum on the law as it governs the decision you have to make as a question of law, which is whether the words complained of are capable of being defamatory and we will get you a factum. The case, the prime cases to know about, Your Honour, I'll hand up now. It's *Colour Your*

World, the Court of Appeal decision and then I'm also gonna hand up Justice Cunningham, as he then was, a decision in Leenen v. CBC, a decision that was held - upheld by the Court of Appeal and leave was denied by the Supreme Court of Canada. So, if you wanted reading material before we get the factum over to you, those three cases are a good start on what the definition of defamation is and what is capable of being defamatory, what a false innuendo is, what a true innuendo is and the standard that's applied. And in short, Your Honour, the capable of being defamatory threshold is a low threshold and so, what I've done in the questions, Your Honour, and what I'll hand up to you is extracts from the Statement of Claim, which contain the part of the pleading that deals with meanings. If you want to make a note, Your Honour, the natural and ordinary meanings for the February 11, 2011 article are set out in paragraph 38 and there's quite a few of them. So, paragraph 38 is the February 11, 2011 article and that's natural and ordinary meanings and the May 18th article, you'll find at paragraph 42, is the natural and ordinary meaning and that's sting eight on the article that you have reproduced. So, paragraph 38 deals with stings one to seven. Paragraph 42 deals with the natural and ordinary meaning of sting number eight in the May 18th, 2011 article. The legal innuendo meaning, Your Honour, is at paragraph 47 of the Statement of Claim and that's the testimony that Dean Nelson

5 gave. So, the way I've set out the jury
questions, Your Honour, if you look at the index,
the draft jury questions, Part A will deal with,
"Are the words complained of in fact defamatory
of the plaintiff Professor St. Lewis?" Part B
deals with the legal innuendos. Part C deals
with the question of actual malice. Part D,
damages and E, general verdict. So, if you turn
10 to Tab A, Your Honour, what I've done is I've -
the number one that you see there, "Did Professor
St. Lewis act as Allan Rock's house Negro?",
that, of course, matches the numbered paragraph
one in the Exhibit 3 and that's how I've set out
these words complained of. So, all of the words
15 if you're looking at page one of these draft
questions, Your Honour, so A, B, C, all of these
meanings are pleaded in paragraph 38 and the jury
if - assuming that you rule that they meet the
low threshold of capable of being defamatory,
20 then the jury decides as a fact whether they are,
in fact, defamatory. So, all the - all of what
you see under - on pages one or two and three are
meanings pleaded, in fact, four, that one has a
lot of meanings. It goes all the way to page
25 five, so.... No, I'm actually wrong on that. It
goes all the way to page six.

THE COURT: And actually, they're all found in
your Statement of Claim.

30 MR. DEARDEN: They're all, yeah, this is verbatim
from...

THE COURT: Okay.

5 MR. DEARDEN: ...the Statement of Claim,
paragraph 38 for that particular sting. And so
then I just, but that one, obviously, is a major
one, has six pages of meanings that the jury, if
you decide they're capable of being defamatory,
the jury will have, in fact, have to answer yes
or no to.

10 THE COURT: Well, obviously, the jury will have a
lot of work. All right, so that's fine. And how
- what do you propose we do? I suppose, I - you
- you've - you're going to provide me with a
factum. I'm going to review these cases and,
obviously, I have to decide whether they're
capable, each and every one of them?

15 MR. DEARDEN: Yes.

20 THE COURT: Okay. So, I will have to do that
homework. You'll provide that factum. I'll do
that, obviously, and provide an answer when we
return on Monday, before you give your
submissions.

MR. DEARDEN: Yeah, when do you want to do that,
Your Honour?

THE COURT: You want an answer today?

25 MR. DEARDEN: No, I do - absolutely not. You
need the, you know, you need to review the law
that we're gonna send over, but no - no, the
difference would be - it just have enough time to
re-adjust the questions. If you decide that
there is a meaning that isn't capable...

30 THE COURT: Some have to be taken out, well, you
have to...

MR. DEARDEN: ...it might have to - yeah. So, if we had your decision and I don't see any need to get it for - in court, you could make the decision in writing.

THE COURT: I could - yeah, I could provide you with a decision and you could adjust it if necessary, accordingly, yes. So, I could do that at the latest Tuesday, yeah.

MR. DEARDEN: Okay, that's plenty of time and then we'll re-adjust the questions accordingly, if we have to.

THE COURT: Okay.

MR. DEARDEN: And Your Honour, deliver the factum up to the fifth floor, to judge's chambers to your attention?

THE COURT: Yeah, and you can - send me one also by e [sic] so, that if for some reason, I'll be - I won't be in Ottawa next week, obviously, now, so if it's sent this afternoon, fine. Otherwise, just, otherwise, they can always send it by courier to me so that - but I think an e-copy would also be helpful.

MR. DEARDEN: Sure. We'll do that.

THE COURT: All right. So, that is it, then? We can - we'll see each other again on the - on June the 2nd.

MR. DEARDEN: Thank you, Your Honour.

THE COURT: Have a good weekend.

MR. DEARDEN: You too.

THE COURT: All right, so now, I will need all of that brought to me and - all right.

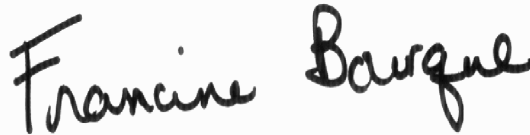
...WHEREUPON THESE PROCEEDINGS WERE ADJOURNED

FORM 2
Certificate of Transcript
Evidence Act, Subsection 5(2)

I, Francine Bourque, certify that this document is a true and accurate transcription of the recording of Joanne St. Lewis v. Denis Rancourt in the Superior Court of Justice held at Ottawa, taken from Recording(s) No. 0411_CR36_20140523_094459 which has been certified in Form 1 by R. Commodore.

November 23, 2014

(Date)



(Signature of authorized person)
Videoplus Transcription Services ACT number 5542650147

SUPERIOR COURT OF JUSTICE

JOANNE ST. LEWIS

Plaintiff

- and -

DENIS RANCOURT

Defendant

P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE JUSTICE M. CHARBONNEAU
on June 2, 2014, at OTTAWA, Ontario

APPEARANCES:

R. Dearden

Counsel for the Plaintiff

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E X H I B I T S

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Legend

[sic] - Indicates preceding word has been reproduced
verbatim and is not a transcription error.

(ph) - Indicates preceding word has been spelled
phonetically.

Transcript Ordered:June 28, 2014

Transcript Completed:October 20, 2014

Ordering Party Notified:October 21, 2014

MONDAY JUNE 2, 2014

(10:08 a.m.)

THE COURT: Good morning.

MR. DEARDEN: Good morning, Your Honour. I'm going to deal with a couple of preliminary matters before we call in the jury?

THE COURT: Yes.

MR. DEARDEN: So, Your Honour, I've revised the questions for the jury in accordance with your ruling on capable of being defamatory. So, I'll hand up two copies for Your Honour, and I dated it today.

THE COURT: So.... Yeah, that's fine. Yes.

MR. DEARDEN: Thank you, Your Honour. And the second preliminary matter is I have to enter a number of more R exhibits and we'll end up R8 to R21. So, since we entered R7, Your Honour, we have the following occurring, all within my submission, with an intention of prejudicing this jury. So, R number 8, Your Honour, is "Lawsuit against Canada professor causes controversy." It is a press TV interview with Mr. Rancourt, so I have printed out what appears on the website; the comments, 33 comments to this website and a disk of the interview with Mr. Rancourt.

THE COURT: Okay.

EXHIBIT R8: Press TV interview with Mr. Rancourt - produced and marked.

MR. DEARDEN: The next exhibit, Your Honour, is a transcript of that video, which has the black square that you see on R8 and amongst other things, Mr. Rancourt says, during this interview, is, "I don't feel that I'm getting a fair shake

and what has happened is the judge cancelled one of my main legal defences. In the middle of my presenting that legal defence..." et cetera, et cetera. He once again attacks this court, publicly. So, we've - we transcribed that interview.

THE COURT: All right.

EXHIBIT R9: Transcript of Mr. Rancourt's interview - produced and marked.

MR. DEARDEN: R10, Your Honour, is from Mr. Rancourt's website Activist Teacher, "Is it time for the tort of defamation to be abolished?" It was published May 23rd and there is also a video that he has - of an interview he did - consider the remarkable short documentary guilty until proven innocent, the tort of defamation video report by reporter James Corbett, starts at 3-10 in this video and then he links to the Ontario Civil Liberties Association, which is really his organisation with Mr. Hickey and a few others. On them, wanting the tort of defamation to be abolished. That was May 23rd.

THE COURT: All right.

EXHIBIT R10: May 23 publication and video - produced and marked.

MR. DEARDEN: The next exhibit, Your Honour, R11 is again published by Mr. Rancourt on his Activist Teacher website, "The crisis of access of justice in self-represented litigants as I see it." This is Sunday, May 25th, 2014. He talks about the fact that he is the coordinator of the self-represented litigant work group of the

Ontario Civil Liberties Association and he doesn't get justice in - to summarize what he has here. Again, publicly available on his website.

THE COURT: All right.

EXHIBIT R11: Mr. Rancourt's publication from May 25, 2014 - produced and marked.

MR. DEARDEN: The next exhibit, R12, Your Honour, is an Ottawa Citizen online report entitled "U of O prof who was fired for a racial slur finds an ally in a former U.S. politician who is black." That was published on May 25th of this year, has a huge picture of Mr. Rancourt in it, links to the petition of Cynthia McKinney who was supposed to be his independent expert witness, as you recall, and of course, that headline is completely wrong. He wasn't fired because of the racial slur in issue in this action but that's an example of the media he's generated.

THE COURT: Okay.

EXHIBIT R12: Ottawa Citizen online report of May 25, 2014 - produced and marked.

MR. DEARDEN: And then the next exhibit, R13, Your Honour, is the original page of the print edition of the Ottawa Citizen, May 26th, 2014, "Fired U of O professor gets activist support" and it reports on Cynthia McKinney's petition protesting Rancourt's court treatment.

THE COURT: Okay.

EXHIBIT R13: Ottawa Citizen print edition of May 26, 2014 - produced and marked.

MR. DEARDEN: The next one, R14, Your Honour, is an Ottawa Citizen article "U.S. Activist Cynthia

McKinney seeks new trial for Denis Rancourt.", published on May 22nd, 2014 and it was updated on May 26th, 2014.

THE COURT: Fine.

EXHIBIT R14: Ottawa Citizen article from May 22, 2014 - produced and marked.

MR. DEARDEN: The next exhibit, Your Honour, I wanna put in as a collective exhibit, 12 exhibits that I would've submitted to disqualify Cynthia McKinney, had she been called as a alleged expert witness on behalf of Mr. Rancourt. The bias is palpable on her part, how she could ever sign that acknowledgement of an expert's duty is beyond me. Her conduct since proves that she never would've been qualified as an expert witness on behalf of this defendant.

THE COURT:

EXHIBIT R15: 12 exhibits to disqualify Cynthia McKinney as an expert witness - produced and marked.

MR. DEARDEN: The next exhibit, Your Honour, R16, is an email that Ed Corrigan, he's the lawyer that Professor St. Lewis testified about in-Chief who had said some nasty things about what she did to Mr. Rancourt that weren't true. She had nothing to do with his firing. He sends out on May 26th, he sends an email to the Law Union of Ontario List Serve. Mr. Rancourt's article "The crisis of access to justice in self-represented litigants as I see it by Denis Rancourt", where Mr. Rancourt says that the system is biased against self-reps, says that he's been required

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to go before 17 different judges, at all courts up to the Supreme Court of Canada, in over 30 open court hearings over more than three years, in motions, appeals of motions, case conferences in the action against me, prepared thousands of pages of legal documents, ordered to pay legal costs pursuing - of the suing party of more than a quarter million of dollars to date prior to the trial and that is now ongoing et cetera, et cetera. This - I find it incredible that a lawyer would do this when the jury is still sitting but it is the lawyer that Professor Rancourt or Professor St. Lewis, rather, did mention as causing her damages with respect to this case.

THE COURT: Thank you.

EXHIBIT R16: Email from Ed Corrigan, dated May 26 - produced and marked.

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MR. DEARDEN: The next exhibit, Your Honour, is an original letter that I PDF'd to Mr. Rancourt on May 29th, 2014. Mr. Rancourt has published the documents for his - the litigation by proxy arguments so about 750 pages, all of this done in the absence of the jury in a *Voir Dire*. He's published them on Archived.org and then he has linked them - then he's linked those into his U of O Watch website in an article - he's added this link since this jury trial started. He's added a link to a May 17th, 2014 U of O Watch article, entitled "Why I walked out of the trial in which I'm being sued." So, now the public have access to all of the *Voir Dire* evidence and

arguments and pleadings in the litigation by proxy matter. He's done it again, Your Honour, with the recusal motion. He's downloaded and made public on Archive.org all of the court file documents in his recusal motion of you, which is May 7th and he's posted or he's linked them on his website for the article "Why did Regional Senior Judge Charles Hackland resign on May 8th, 2014?" That was his May 22nd, 2014. So, he's added a link since then that has all of the documents pertaining to his motion to recuse you as the trial judge. I wrote him and said that, "These are additional and intentional attempts by you to prejudice the jury in this trial, which you abandoned the morning of May 16. Notwithstanding that you abandoned your defence in this liable action, all persons are prohibited from publishing any information that is filed during a *Voir Dire* in a jury trial. Your conduct since you abandoned your defence and this trial has been contemptuous and will be addressed after the jury returns its verdict. I am demanding that you immediately remove all *Voir Dire* documents you have published on Archive.org to mitigate the prejudice to the jury that you are intentionally - you are intentionally attempting to cause." We just checked, Your Honour. He has not removed the *Voir Dire* documents in the litigation by proxy and the recusal motion matters. They are still available as I stand here right now.

THE COURT: All right, thank you.

EXHIBIT R17: Letter of May 29, 2014 from Mr.

Dearden to Mr. Rancourt - produced and marked.

MR. DEARDEN: The next exhibit, R18, Your Honour, is a Facebook page posting of Mr. Rancourt on his website against the dismissal of Den [sic] Rancourt. He did this when, Ms. Semenova? May 24th...

MS. SEMENOVA: May 24th is the last entry.

MR. DEARDEN: 2:46 p.m. He's posted a video link of Hazel Gashoka, who spoke to Your Honour during the *Voir Dire*, demanding to give testimony here and disagreeing with your decision and also the article, you know, "Give a fair court hearing to Denis Rancourt." So, he's posting on Facebook including his article about "Why did Regional Senior Judge Charles Hackland resign on May 8th, 2014?" So, he's using many platforms, Your Honour, to do whatever he can to prejudice this jury and to make himself out to be a martyr and a victim.

THE COURT: All right.

EXHIBIT R18: Facebook posting on Mr. Rancourt on May 24 at 2:46 p.m. - produced and marked.

MR. DEARDEN: Another Facebook entry, Your Honour, R19, May 25th, Mr. Rancourt post [sic] a photo of himself and the text, "My name is Denis Rancourt. The University of Ottawa is sponsoring a defamation lawsuit against me. The dud [sic]- the judge has ties to the university and summarily cancelled my right to make a defence. Please sign my petition started by Cynthia McKinney and endorsed by the Ontario Civil Liberties Association."

THE COURT: Where - this was what date?

MR. DEARDEN: It's quite recent, Your Honour.

MS. SEMENOVA: May 25th.

MR. DEARDEN: May 25th.

THE COURT: All right.

EXHIBIT R19: Facebook posting of May 25th -
produced and marked.

MR. DEARDEN: The next one, Your Honour, R20, is
Twitter. So, Mr. Rancourt has sent out three
tweets, May 25th, he sends out a tweet "The crisis
of access to justice in self-represented
litigants, as I see it.", which is his Activist
Teacher website. Then he tweets on May 24th, the
- or re-tweets - he re-tweets Cynthia McKinney's
tweet that Dr. King said in justice anywhere is a
threat to justice everywhere. That's why I'm
involved in the case of and that's Denis Rancourt
and the third one, Mr. Rancourt on May 22nd, he
tweets, "Give a fair court hearing to Denis
Rancourt petition by Cynthia McKinney", which
then has a link, of course, to her petition. So,
that's another platform he's using to prejudice
this jury.

THE COURT: Okay.

EXHIBIT R20: Twitter of May 22, May 24 and May
25 - produced and marked.

MR. DEARDEN: And the last one, Your Honour, R21
is a May 24th article written by Steven Lendmen,
you've heard evidence about his handiwork against
Professor St. Lewis and this one, entitled "The
activist Professor Denis Rancourt's judicial
lynching. Activist Professor Denis Rancourt's

judicial lynching." And he says, "McKinney circulated a petition. He had protest Ontario Superior Court judge Michel Z. Charbonneau's judicial linking. Rancourt is his own legal defence. He taught himself law to do so. During his opening jury statement, Charbonneau silenced him. He did so reprehensively. He acted extrajudicially. He took the law in his hands. He twisted it irresponsibly. He prohibited Rancourt's fundamental right to speak and he cite [sic] section 2(b) of the *Charter* and section 7 of the *Charter* showing us he hasn't have a clue what he's talking about. Academic and speech freedoms are inviolable. So is the right to a fair and just legal defence. America denies them. So does Canada. Doing so reflects police state injustice. Charbonneau is more hanging than real judge. He shames the office he holds." And this disgust goes on and on.

THE COURT: And where do we find it?

MR. DEARDEN: It's on his blog. It's on the website but it's on Steve Lendmen's blog.

THE COURT: Oh, I see but is it - is there any link - specific links to Mr. Rancourt? In the sense that it hasn't been republished in any other place than in this blog?

MR. DEARDEN: We haven't checked Tweets and Facebook recently...

THE COURT: Okay.

MR. DEARDEN: ...but expect it.

THE COURT: All right.

MR. DEARDEN: My point here on ones that Mr.

Rancourt hasn't tweeted or put on one of his websites or put on Facebook is that he's caused these publications.

THE COURT: Mm-hmm.

MR. DEARDEN: He's caused them. Well, if you look at the first page, the second paragraph there from Lendmen, Your Honour, he does refer to Activist Teacher and U of O Watch provide updates...

THE COURT: Okay.

MR. DEARDEN: ...to explain - they explain what most people can't imagine. And recall there, Mr. Rancourt and Mr. Lendmen are friends. They both supported each other when their respective institutions fired them. So, that's - for now, Your Honour, we're up to R21. I'm hoping there isn't any more. It's probably a false hope. So, subject to any questions Your Honour has, I'm ready to commence my closing address and I expect, Your Honour, that I'll be going late into the afternoon. The structure is I'll be dealing with the falsity of the statements in Exhibits 3 and 4 and then I'm gonna get into malice. Then, I'll get into meanings and then I'll get into damages.

THE COURT: All right, bring in the jury.

CLERK REGISTRAR: Order, all rise.

...JURY ENTERS (10:38 a.m.)

THE COURT: Good morning.

CLERK REGISTRAR: All members of the jury are present, Your Honour. You may be seated.

THE COURT: Well, it's now time for Mr. Dearden

to give his closing address. So, please listen to him carefully.

SUBMISSIONS BY MR. DEARDEN:

MR. DEARDEN: Good morning, members of the jury and thanks for coming back. In November 2008, Professor St. Lewis was asked by the University of Ottawa's administration committee to evaluate a student report entitled, "Mistreatment of Students, Unfair Practices and Systemic Racism". Over two years later, Professor St. Lewis does this Google search that you see - you probably can't see it, but trust me, it's there. She does a Google search on Joanne St. Lewis and the item, which I can't see, is the second one here, "Did Professor Joanne St. Lewis Act as Allan Rock's house Negro? February is Black History Month in Canada and the U.S. U of O Watch believes." She sees that and she's shocked to discover that. And eventually, she finds out, if you can click on that link, Anastasia, that it's Exhibit 3. That's this exhibit here. "Did Professor Joanne St. Lewis Act as Allan Rock's house Negro?" One of the articles initiated in this libel action. So, anybody in the world has access to that today and has for three years. Anybody that has an Internet connection has access to, "Did Professor Joanne St. Lewis Act as Allan Rock's house Negro?" Professor St. Lewis testified, you'll recall, that she was shocked, upset, her heart was pounding. She felt like she was trapped in her office. She was overwhelmed, she was

stunned. She stared at that screen, at the Google search result, not at that article and didn't know what to do. She was an established - at that time, Professor St. Lewis' reputation as a lawyer, as a member of this community, was outstanding. A member of the legal profession, it was outstanding and I'm gonna get into the evidence on that with you shortly; the testimony of Allan Rock, the testimony of Professor Currie. She had an outstanding reputation and then the defendant, Denis Rancourt, writes Exhibits 3 and 4, available on the Internet for anybody in the world to see. She knew what those words meant and she knew they had to come down. And her immediate reaction in her testimony was, how could anyone say that about me? It was a lie. It was not the type of person I am. She didn't immediately read Exhibit 3 - or click on the Google search result, because she knew once she read it, she could never unread it, that somebody was calling her a house Negro. So, what did she do? She asked her close colleague at the law school, Professor Currie, if he would read it for her. And you will recall Professor Currie's testimony about what he observed the impact was on Professor St. Lewis knowing that there's an article out there that says that - "Did Professor Joanne St. Lewis Act as Allan Rock's house Negro?" And Professor Currie, apart from - I mean some of his evidence, but what I thought was quite telling, and said it all is, she looked as if she had been bullied. She looked like she had

been bullied. And that, members of the jury, was just the beginning of the three years of hell that she's gone through in Mr. Rancourt's cyber-bully campaign against her. Facebook messages, Twitter, two websites. Okay? What he says in court, motion after motion. He never defamed her. He has free speech rights, though she had to sit there in silence and put up with that for three years. You recall at the end of her testimony, Professor St. Lewis showed you the timeline and used a very apt expression, it was like a tsunami wave of cyber-bullying coming at her. Okay? All of the things that were happening. She was just hoping that maybe she'd have one month where she didn't have to deal with Mr. Rancourt's cyber-bullying, and she never got it. She got the tsunami wave, coming at her, coming at her, coming at her, to damage her. Now, members of the jury, we're dealing with a lawyer, we're dealing with a law prof. Integrity and trustworthiness is the cornerstone of any lawyer's professional life and anything that tarnishes that reputation can be disastrous. You have to have integrity. You can't be a house Negro. So, Exhibits 3 and 4 refer to Professor St. Lewis as a house Negro six times. Mr. Rancourt ousted her. He ousted her during Black History Month, which he knew nothing about. I read in, from his examination for discovery, he never wrote an article about Black History Month. He never made a presentation about Black History Month. He never taught a course about Black

History Month but you know from the evidence of Professor St. Lewis, how important Black History Month is to her and how many events she's spoken at, at Black History Month and what it means to her.

Ladies and gentlemen of the jury, Exhibits 3 and 4 are a cruel, callous attack on Professor St. Lewis' reputation, 'cause he did it through the colour of her skin. You recall that I asked President Rock, what did the colour of Professor St. Lewis' skin have to do with her qualifications to evaluate a 17-page student report? Nothing. Nothing. It was completely unnecessary to introduce Black History Month, oust her in Black History Month, the colour of her skin. Remember the photo, photo right there, just make sure the world knows, Professor St. Lewis is black. Okay? He attacked Professor St. Lewis' integrity and dignity as a human being. Those articles are false and they're nothing but a character assassination. So, you're about to decide whether Denis Rancourt defamed Professor St. Lewis in Exhibits 2 and 3 - or 3 and 4. You heard Professor St. Lewis' testimony. She didn't know Denis Rancourt. She had no involvement with his firing at U of O. She had no involvement in the labour grievance that was filed that he was dismissed from U of O. Nothing to do with it. So, you will have to decide one, whether the eight stings, the eight numbered paragraphs you recall that are in your handout that you have,

that in fact, defamed Professor St. Lewis and then you'll have to decide whether Mr. Rancourt acted maliciously towards her and that matters because to award aggravated damages and punitive damages, there has to be malice on the part of the defendant. And I say that the malice drips off this defendant and I have quite a bit of evidence that I'm going to highlight for you in this closing address about the malicious acts of Denis Rancourt and if you decide that Denis Rancourt defamed Professor St. Lewis, you assess general damages, those are presumed, but in addition, if you find he was malicious, you can award aggravated damages and punitive damages.

So, you recall back to May 12th, I gave an opening address to you. I gave you a roadmap of where we were gonna go in the evidence in-Chief and I gave you the gist of what the witnesses were gonna say. All of those witnesses came and testified. All of them gave evidence. So, the evidentiary stage of this trial is beyond done and we're into my closing address and tomorrow, Justice Charbonneau will deliver his charge to you, which will deal with the law and will deal with some of the evidence and giving you directions of what you're supposed to do as a jury. And remember this, anything I tell you about the law that might contradict something Justice Charbonneau says, ignore what I say. He is the law. He - you do what Justice Charbonneau tells you to do with respect to his charge on the law.

5 So, my closing address is gonna be divided into
six parts. I'm gonna deal with Professor St.
Lewis' good reputation, as a first point; a good
reputation in the legal community and in the
community generally. The second part will deal
with Professor St. Lewis' evaluation report.
Like what did she actually say in that report?
I'm gonna take you through some of that and it's
10 stunning that you could have this article
written, that she acted as a house Negro when you
read what she actually wrote. And then I'll deal
with false facts that are in Exhibit 3 and 4, as
the third point. The fourth point will be Denis
Rancourt's malice. The fifth point will be the
15 meanings. We will have a booklet of questions
for the jury, that's you, to decide on do those
eight stings mean the following things? So,
you'd have them all out in a little booklet like
this, that'll take you through. And then lastly,
20 the sixth point, the damages the professor has
suffered at the hands of Denis Rancourt in his
Exhibits 3 and 4.

25 And also keep this in mind. My closing address,
it's submissions to you. I'm gonna highlight
evidence for you but in the end, of course, it's
your decision, it's not - don't take what I say
if you don't agree with me. Don't agree with me,
you know, if you disagree. It's your decision
30 but I'm gonna walk you through some highlights of
the five days of testimony that you've heard and
I have to whittle all that five days into about

five hours. So, that's what I'm embarking on now.

So, first point, Professor St. Lewis' good reputation in the legal profession and in the community. You'll recall we heard that Professor St. Lewis had been a lawyer for over 30 years and a law prof for over 20 years. She was granted tenure in 2001. So, 10 years before Exhibit Number 3 said that she was untenured or a non-tenured professor, ten years before that she was granted tenure. She was the first black female law student at her law school at UBC and one of the first 20 black women to be called to the bar in Ontario as a practising lawyer and she was and remains the only black lawyer to be elected as a benchers of the Law Society of Upper Canada, which governs the 40,000 plus lawyers in this province practising law. That's in 217 years, she is the first and only black lawyer to be elected not once, not twice but three times, she served as a benchers and the other neat thing about that is there's only 20 - 40 benchers for the whole province, for over 40,000 lawyers. Toronto gets 20, 'cause Toronto gets everything and outside Toronto, they get 20. So, she's one of 20 for the rest of the province. Okay? In 217 years, to be elected to govern us lawyers, the 40,000 plus lawyers.

She received a Leadership Award from the Black Law Students' Association of Canada and she acted

as the faculty advisor of that national association for 17 years. There was 21 faculties of law in this country and she was the faculty advisor to the Black Law Students' Association of Canada. The Canadian Association of Black Lawyers, twice awarded Professor St. Lewis their award for recognition of Black Women's contribution to the law. The Ottawa Life Magazine recognized Professor St. Lewis as the top 50 people in the Capital. She also was awarded the DreamKEEPERS Life Achievement Award from the Martin Luther King Junior Day coalition and she gave testimony, you'll recall, that it recognized her anti-racism and social justice work. She was a role model for other people and it's a life achievement award, prestigious award. She also received the United Nations of Canada Honoured Champion Award for the 100th anniversary of International Women's Day and was the only woman of colour, out of the 10 to 12 people who got that United Nations award, to get it.

You heard testimony - we heard testimony, Professor St. Lewis has fought all her life against racism and discrimination and she has extensive experience in dealing with systemic racism as well as individual racism.

Allan Rock's testimony, President Rock: he told us he's known Professor St. Lewis for years before he became President of U of O. They travelled in the same circles of lawyers and

5 professors. Joanne St. Lewis is held in the highest regard, according to President Rock. Excellent professor whose students really enjoy her teaching; a respected scholar; enjoyed the highest standing and respect. Then he mentioned that she was elected three times as a benchler; one of 20 outside Toronto. Someone of achievement; very successful professionally.

10 Dean Bruce Feldthusen testified. He's known Professor St. Lewis for 14 years, since he came to U of O to be the Dean of the law school. He testified that Joanne St. Lewis was best - was known best as an expert in anti-discrimination, race, disabilities, a leading expert in anti-discrimination. He called on her to defuse tense situations at the law school and said she did it very well. She enjoyed a degree of trust with students, especially minorities unlike any other professor at the law school. She was a mentor to them and he also mentioned - Dean Feldthusen also mentioned that more than one student of colour had told him, they came to U of O's law school because Professor Joanne St. Lewis taught there. 15 And John Currie, Professor Currie testified. He's taught at the law school since 1991. He's a close friend of Professor St. Lewis. Testified to us that Professor St. Lewis was the founding director of the Education Equity Program. That was a program designed to foster an environment at the law school where there would be a diversity of students and faculty. She was the 20 25 30

5 founding director of that program. In terms of
Professor St. Lewis' relationship with faculty
and student, Professor Currie testified she was a
leader; a fearless advocate of anti-racism;
highly valued at the law school for her expertise
in institutional racism. Professor Currie told
us that Professor St. Lewis was a mentor to
racialized students, a sounding board, a rallying
point for them. She was the go-to person at the
10 law school for issues of systemic racism.
Professor Currie also testified about Professor
St. Lewis' reputation for independence. "Of all
my colleagues, it's Professor St. Lewis, fiercely
independently minded, not one to tow the line,
well known not to tow the line." "There is not a
15 more improbable person to be labelled what I see
in Exhibits 3 and 4." Not a more improbable
person to be labelled what he sees in Exhibits 3
and 4. So, that, I submit to you, members of the
jury, that Professor St. Lewis had an outstanding
20 reputation that is now under attack for three
years.

25 Let's move to the second point, which is the
evaluation report she was asked to do and
authored. So, in terms of Professor St. Lewis'
experience in addressing the issues in systemic
racism, I'm gonna rhyme off nine of them. She -
this was all from Professor St. Lewis' testimony
to us. Ontario Race Relations Directorate, the
30 Ottawa Police. Ontario Human Rights Commission,
Executive Assistant to the Chief Commissioner.

The third one was Ontario Human Rights Commission's policy on racial jokes, slurs and harassment. The fourth, founding director of the Education Equity Program at the law school. Fifth, special advisor on race relations to the Deputy Attorney General of Ontario. Sixth, she was on the CBA, the Canadian Bar Association's working group on racial equality and wrote a report, "Virtual Justice, Systemic Racism in the Canadian Legal Profession." Seventh example she gave, all of these involving issues of systemic racism, okay? Manitoba Aboriginal Justice Inquiry and then the Executive Program on Counter Terrorism that she teaches at the - or as an instructor at the University of Southern California, the only Canadian instructor to be asked to attend that executive program on counter-terrorism. And then all the training that she's done on anti-racist decision making to address issues of systemic racism. She has the expertise to do what the administration at U of O asked her to do, which was to evaluate the 17-page student annual report. She wasn't asked to analyze the university's academic fraud process. That came as a second mandate. She was asked to evaluate the SAC's report and she gave testimony to us, it was like grading a paper. It was 17 pages. She's an expert in the anti - in systemic racism. It was like grading a paper. There were no restrictions or conditions put on her mandate by Robert Major or Allan Rock. They left it up to her. There was no deadline imposed to do this

5 evaluation and her report was advisory. She
didn't have any decision making power. She
evaluated the report, made 10 recommendations and
it was up to U of O to do what they wanted to do.
Not her. It was just advisory. Professor St.
Lewis testified that her report was not a
counter-report as Mr. Rancourt claimed. It
wasn't a counter-report. And during her
10 testimony, she noted a Student Appeal Centre news
article, written three weeks after her report was
made public by U of O. So, in [sic] December 17,
2008, three weeks after U of O publicly released
Joanne St. Lewis' evaluation report, the Student
Appeal Centre director, Mireille Gervais, wrote
an article on the Student Appeal Centre's news
15 and I wanna take you to that. So, I have paper
for you. More paper. I've prepared a compendium
of exhibits, two volumes, Your Honour, which
hones down the two feet of paper at your feet or
in those boxes. You'll be pleased and this is
20 all I'm gonna be referring to. I'm not gonna
make you turn into those boxes. This is so we
can also get this done in a reasonable time.
THE COURT: We'll have to give this a number
25 though.

MR. DEARDEN: Let me know.

THE COURT: Even...

MR. DEARDEN: One and two? Sorry, Your Honour, I
couldn't hear you.

30 THE COURT: Well, we'll have to give this a
number for the purpose of the record and...

MR. DEARDEN: Oh, yes, Your Honour. So, I have a

Volume 1, which is what exhibit, Mr. Registrar?

CLERK REGISTRAR: Exhibit Number 31.

MR. DEARDEN: And Volume 2 will be Exhibit Number 32.

EXHIBIT NUMBER 31: Volume 1 - produced and marked.

EXHIBIT NUMBER 32: Volume 2 - produced and marked.

THE COURT: I have two Volume 2's here. So, it's 30 and 31 you say?

CLERK REGISTRAR: This will be 31.

THE COURT: Thirty and thirty-one, right?

MS. SEMENOVA: Thirty-one and thirty-two.

MR. DEARDEN: Thirty-one and thirty-two, Your Honour.

THE COURT: Oh.

MS. SEMENOVA: Yeah.

CLERK REGISTRAR: Oh, sorry, yeah, 31 and 32.

THE COURT: Thirty-one and thirty-two.

MR. DEARDEN: And Mr. Court Reporter, do you need one too? You're okay? Okay. So, if you could turn to Tab 14, members of the jury, please.

THE COURT: So, that there's no confusion, you should explain to them how you set this up and what we find here, so I just....

MR. DEARDEN: Yes, Your Honour. So, what I've done is from the exhibits that are entered, I've extracted something like actually Tab 13 is where I want you to turn. So, this is a Student Appeal Centre news article, December 17, 2008. And if you look at the index, at the front, we've put the trial exhibit number in the column on the

5 right. So, that particular article, you would
find in Exhibit 1, Tab 18, that you have in the
boxes at your feet. So, this is only evidence.
All you see in these two volumes is evidence
that's been introduced and if you need to look at
the original source of that exhibit, you've got
the column. It says trial exhibit number. This
just makes it a lot easier than having to pull
different books.

10 So, where I am is, I reminded you of the
testimony that Professor St. Lewis said this
isn't a counter-report as Mr. Rancourt alleged.
And Professor St. Lewis noted that if you look at
15 the second page of Tab 13. Okay? Now, this is
written by Mireille Gervais. She's the director
of the - that wrote the report that Professor St.
Lewis is evaluating. She says at the top of page
2, "Nonetheless, Professor St. Lewis concludes
20 her report with 10 recommendations that echo the
SAC's reports recommendation and demands,
including strict adherence by the senate appeals
committee to reasonable deadlines in the
establishment of a university policy protecting
25 undergraduate students from discrimination and
non-sexual harassment." And in the last
paragraph of this report, written three weeks
after Joanne St. Lewis' report was released
publicly, Mireille Gervais writes, "The
30 University of Ottawa has not yet taken any action
to implement Professor St. Lewis' and the Student
Appeal Centre's recommendations." Hardly a

5 counter-report when the people you're evaluating
or the report you're evaluating, the author of
that report says your recommendations, Joanne St.
Lewis, those 10 recommendations, they echo what
we were going after in our report and we want
them implemented. We want those, the university,
to implement your report, your recommendations.
It wasn't a counter-report. And the mandate that
Professor St. Lewis was given to evaluate the
10 SAC's report was completed, once she handed in
her final report and that was November 18, 2008.
When she submitted that by email to the
university, that was the end of her mandate.

15 Professor St. Lewis didn't exchange emails or
have any communications with President Rock about
her draft or final reports. That's the evidence.
She didn't exchange emails or have communications
with Allan Rock about her draft report or her
20 final report. And then how many of the 1,000
plus profs that taught at U of O in 2008,
expressed a concern to Professor St. Lewis about
her report? Zero. How many of the 37,000
students that attended U of O expressed a concern
25 to Professor St. Lewis about what she wrote in
her report? Zero. Nobody. Professor St. Lewis
also testified there was no personal benefit to
her for conducting that evaluation, other than
the satisfaction that she was making a
30 contribution because addressing issues of
systemic racism is what I do. No personal
benefit. She wasn't paid. She didn't a reduced

5 course load for doing this work for the
university. She said, "I added it to my duties
because it was a topic of importance to me,
systemic racism allegation." What did she write
- what did Professor St. Lewis actually write in
her report that supposedly makes her the house
Negro of Allan Rock? Tab 1, I've reproduced the
report. Now we have hand-written - that we the
lawyers have hand-written at the top right hand
10 corner, the page numbers, because there is no
page numbers on this final report. So, that's
our handwriting and it's our handwriting where we
go number one, number two in circle. So, let's
start with the first paragraph.

15 "I've been asked by the Vice-President
of Academic to provide an independent
evaluation of the Student Appeal Centre
Annual Report with particular emphasis
on identifying any areas of concern for
university response and providing an
20 assessment of the methodology in
analysis giving rise to the allegations
of procedural unfairness, abuse and
systemic racism it contains."

25 Second paragraph,

30 "As a preliminary matter, I found the
report to be very unprofessional in
tone. In many places, the content can
only be described as totally
unsubstantiated, conclusory, and
inflammatory. That being said, my
primary focus was on excavating the

relevant matters that might relate to possible error or mal-administration on the part of the university. I did find some areas of improvement and those are identified herein."

Page 2, number 3.

"It is the mythological failures and the lack of substantiation which makes the report most troubling. The matters raised within the report of possible systemic racism and procedural unfairness are significant issues and cannot be given short shrift by the university."

Cannot be given short shrift by the university.

"It is therefore unfortunate that the report fails to provide sufficient foundation to enable the university to identify the specific areas of concern or to assess the depth or even the existence of a problem. It is for this reason that I am reiterating my principle recommendation that an independent assessment to evaluate the academic fraud files identified by the Student Appeal Centre be conducted on an urgent basis to ensure that there is indeed no systemic racism in the academic fraud process."

The principle recommendation, by the way, is number one recommendation that you will find at page 16 of the report. Top of the page 16,

recommendation number one.

"Conduct an independent assessment to determine whether systemic racism plays any part in the academic fraud process."

The second paragraph of that recommendation number one.

"The fact that the report did not succeed in this mythological attempts does not mean that there is not a problem that should be addressed. The university is bound by its obligations, under the Ontario Human Rights Code and is committed to an inclusive community."

Going now back to page four. Right at the bottom where I have number four in a circle. Professor St. Lewis recommends that it might be helpful for SAC and the university to jointly develop an educational tool to assist students to better understand the underlying principles in the academic fraud process.

And then page nine, number five, dealing with the entitlement to have sessions of the senate appeal committee recorded.

"The secretary of the university records the decision of the committee, the brevity of reasons is governed by the nature of the decision. It may be that the SAC and the senate could discuss a reasonable level of detail for written reasons that would assist students to understand that their concerns had been heard and which factors

informed the senate appeals committee in its decision."

Flipping the page, number 6, at the top of page 10.

"It would've been very helpful if the SAC report had provided statistical data and detailed specific concerns, with specific components of the academic fraud process. Information regarding the faculty, the nature of the procedural error would've been helpful in this evaluation. It also would've been helpful to aggregate this information to identify patterns within the process that required attention. Unfortunately, I can draw no conclusions from the material provided."

Page 14, under the heading, "Is there a problem of systemic racism in the academic fraud process at the University of Ottawa?"

"The short answer for this evaluator on whether there is systemic racism in the administration of the academic fraud process at the University of Ottawa is, I don't know. What I do know is that this report does not establish this in any measurable or analytically plausible fashion. Given the seriousness of such an allegation, it is incumbent on the university to look beyond the tone of the report, to reassure itself that such is not the case."

Okay?

"Notwithstanding all the problems with the SAC's report, Professor St. Lewis is consistently telling the University of Ottawa that it is incumbent upon you to look beyond the tone and reassure yourself, we don't have a problem here. Some explanation should've been provided as to why the three case studies involving Asian women, given that the university's international student population represents over 150 countries, care should've been taken not to inadvertently stereotype Asian women as having more difficulty than their peers with the academic process of the university. This is particularly important, given the diversity of Asia and the diversity of experience represented within the international student community. I am very sensitive to the suggestion that a lack of familiarity with the concepts of plagiarism, is inextricably tied to international students and more importantly, Chinese women. SAC should not lead to a conclusion that could inadvertently stereotype many non-European, western educational institutions that have well-developed academic standards equal to those of the University of Ottawa. Further

information is required to assess the nature of the problem and the appropriate response."

On page 15, paragraph number 9.

"After the above data is obtained, it would then be necessary to correlate this with specific programs. For example, perhaps the complaints involved a single course or a single professor or a specific department or unit. The first step in the process would've been to put the detailed findings of the systemic failure before the faculty or department and ask for a remedy. If the solution could've been satisfactory, it would've been appropriate to bring the entire matter to the attention of the senate through the student reps. Using the annual report process in the manner that has occurred circumvented the process prematurely."

The way forward. Ten recommendations follow at pages 16 through to 17. I've taken you through the first recommendation, which is that U of O should conduct an independent assessment to determine whether systemic racism plays any part in the academic process. The rest of these recommendations deal with procedures such as a deadline you'll see in recommendation number three, a deadline of 30 business days to be heard by the senate upon receipt of materials from both the student and the faculty would not be

unreasonable. The reason is, Professor St. Lewis' in recommendation three is noting that the university should be mindful that not only do delays in the process compound the stress experienced by students but it also could open the institution to claims of procedural unfairness. So, by recommending 30 days, that helps - it's helpful to the students because of the reasons that Professor St. Lewis has outlined in recommendation three. And recommendation six is an example, it's a recommendation that the Student Appeal Centre should have materials, which explain plagiarism and provide a link to beware of plagiarism be put on their website. And recommendation nine, consideration should be given by the university to establishing parallel policy to policy 110 on the treatment of graduate students, et cetera. So, these are all things that - recommendations that go to procedures that are for the benefit of the students. And look at the concluding paragraph on page 18, number 11. I've got it as Professor St. Lewis ends her report by saying,

"I share the SAC identification of academic fraud as a significant issue. The integrity of our institution and the trust we hold with the public, that our graduates are both capable and of good character, requires us to meaningfully address academic fraud, at both informal and formal levels. The ultimate relationship that the university has is

not simply to its current student community, but also to the public and its graduates who will serve and the graduate whose reputations and careers are bound up with the degrees they receive."

That's what Professor St. Lewis wrote. And that, members of the jury, has her acting as a house Negro of Allan Rock with what I've highlighted there and what she really wrote? It does not.

Now, President Rock testified. You recall that he has been the president and vice-chancellor since 2008 at the University of Ottawa. He's a former treasurer of the Law Society of Upper Canada, which is the head of that organization. He had three cabinet portfolios, with the Liberal federal government and he was Canada's ambassador to the United Nations in New York. I asked him about the Student Appeal Centre's annual report and he described it as sensational, serious allegations and he was very concerned. "I wanted someone to review the SAC report to tell me whether it was credible and serious. The SAC report was terrible for students who lost confidence in the university's academic fraud process, that was alleged to mistreat students and rife with systemic racism. It was important that students feel the processes are fair and the public knows that the University of Ottawa acts on correct principles." That was President Rock's testimony.

5 So, why did they select Professor St. Lewis to
evaluate that report? In discussions with Robert
Major, the VP of Academic, they concluded that
they had to give the report to someone
knowledgeable enough to analyze it. "Turn to
somebody with expertise. Was it a credible,
serious report?" And they asked Joanne St.
Lewis. "We wanted the SAC's report in the hands
10 of someone universally recognized as an expert on
allegations of racism." And then he rhymed off
her credentials. She was the director of the
Human Rights Centre. She spent her career
battling racism. Her credentials were
impeccable. She understood the dynamics of
racism. She had a reputation for independence,
15 and she was known as her own person. If there
was a problem, she was going to tell us and not
sugarcoat it. That's what President Rock
testified to, to us about.

20 There were no restrictions. There was no
conditions put on Professor St. Lewis about the
content of the report. The colour of Professor
St. Lewis skin had nothing to do with her
25 qualifications to evaluate the report. Professor
St. Lewis had the final say on the contents of
her report. "It was her task. She would
decide." President Rock testified he didn't have
any discussions with Professor St. Lewis about
30 her report. He didn't have any communications
with her about her 10 recommendations.

5 Tab 2 of your compendium. There's an email that Mr. Rock, President Rock, sent to Robert Major and others and you'll see I have lines, which we call side bars at the paragraph that starts one last point. Okay? This is where President Rock says,

10 "So far, our dealings with her had been through Robert and had been scrupulously objective. We have simply sought her view and had imposed no limitations, constraints or conditions. She has been entirely free to say anything she wants. In order to maintain this professional and objective relationship with her, I want Robert to be the only one in communication with her. Robert can simply observe. The first recommendation seems inconsistent with your findings. It will then be up to Professor St. Lewis to decide whether to make a change. If a number of people all send emails and call, we will lose the focus of professionalism and independence."

25 President Rock testified that email only went to his team. He was intentionally not writing Joanne St. Lewis. It was important to maintain her independence. President Rock testified that the strength and value of Joanne St. Lewis' report was related to its independence. And he didn't direct her or tell her what to say. And he also testified, as far as he knew, Joanne St.

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Lewis was not aware of that email. She had no involvement with the administration committee's discussions of her evaluation report. And I put to President Rock a passage from Exhibit Number 3, where in a couple of places Mr. Rancourt has written that the report is not independent and he says not independent by any stretch. I asked him, based on your involvement with the university administration's response to the SAC's annual report, what do you have to say about the statement that Joanne St. Lewis' report is not independent by any stretch? And he says he disagrees. Every effort was made to let her do her report. Let the chips fall where they may. It was independent. That was his testimony. And then at Tab 3 of the compendium, you'll see towards the bottom of that first page, so document 21. It's one of those FIPPA documents or access to information documents referred to in the Exhibit 3. He says in the first bullet, "Professor St. Lewis would be an ideal spokesperson if she is willing." And what President Rock testified was is he was encouraging wide dissemination to get at the impression that the SAC's report left with the public and the students about the academic fraud process. And he said that he only sent that email to his own team. Joanne was not aware of this email is what my notes have was his testimony. And then I asked President Rock if Professor St. Lewis enthusiastically toiled to discredit the 2008 SAC annual report, which is

also in Exhibit Number 3. And he said, "No. My impression of the work she did is consistent with my understanding of her as a professional. She prepared a thoughtful report professionally." And then I asked President Rock, "Did Joanne St. Lewis act as your house Negro when she prepared her evaluation of the SAC report?" And he said, "No." And then he said, then he testified, "It's a term that describes someone servile. You take direction from someone. It's a racist epithet. It makes you heartsick. It's plain wrong. We ensured that she was an independent actor. She wrote her own report." And then you'll recall that I took President Rock to the sting number 6 of Exhibit 3, which is the ATI records expose a high level cover-up orchestrated by Allan Rock himself, to hide the fact that St. Lewis' efforts were anything but independent, as she characterizes her report on the first page. And in another exhibit, which is found at Tab 5, and it was entered as Exhibit Number 8 at the trial, this was a watch list, a U of O Watch list Mr. Rancourt writes that Allan Rock lies, deceptions, invasions and hypocrisies. And if you turn to page 2 of 14, you see the middle bullet where Mr. Rancourt says that Mr. Rock personally managed the cover-up of his administration's 2008 campaign to discredit a student union report. And I asked him what he had to say about those two articles stating that he orchestrated a cover-up and his first response was, well, the documents we just reviewed, which is like the one

at Tab 2, that his email, his internal email to his team, about maintaining the independence of Professor St. Lewis. He says, "The documents we just reviewed show it was anything but a cover-up." But he says, "Far from covering up...", he says, "...we went beyond the Gervais report. We gave Professor St. Lewis a second mandate. We gave her a new task. We asked her to conduct an analysis of - or a real study...", his words were, "...a real study of the university's academic fraud process." And that you'll see at Tab 6. This is the March 16, 2009 letter from Robert Major to Professor St. Lewis where he says, "I'm pleased that you agreed to assist us with the evaluation of our academic fraud process." So, Joanne St. Lewis was to conduct her own assessment of whether we had a problem, was the testimony of President Rock. So, contrary to the allegation of a cover-up, U of O was asking Joanne St. Lewis to look into it. Look into the academic fraud process not cover-up because he wants to know if there's a problem. So, that was his response to Mr. Rancourt's accusations that there was a cover-up going on. And then I asked Joanne St. Lewis, Professor St. Lewis about that particular passage from the Allan Rock, lies, deceptions and invasions piece of Mr. Rancourt, where he speaks of a cover-up of the administration's campaign to discredit a student report. And the testimony of Professor St. Lewis, "I didn't discredit the SAC report. The SAC supported my recommendations, which they

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did." It's not - how can you discredit a report when the SAC itself says that Joanne's 10 recommendations echo the SAC's 10 recommendations. And not only that, the SAC calls on the university to implement Professor St. Lewis' recommendations. That's not discrediting. That's support from the SAC. There was no campaign, no knowledge of a campaign. "I evaluated a report.", testified Professor St. Lewis. I was not part of a cover-up but he attacked my integrity.

And then you recall Robert Major testified. He has a PhD in French Literature from the University of Ottawa. He taught there as a prof in 1967 to 2009. He chaired a department. He was Associate Dean of the Arts department. He was professor of the year. He then became VP in Academic Provost at U of O from 2001 to 2009. He authored six books, 80 articles and won a number of awards and prizes, such as the France-Quebec prize. I asked him about Professor St. Lewis' evaluation report. He testified - Mr. Major testified, Joanne St. Lewis had the final say on the contents of her report. The report was her complete responsibility. And then going back to Tab 3, this is, I put to him, what you see at Tab 3, which is Allan Rock's email to Robert Major and others of November 17th, about the independence of Joanne St. Lewis and maintaining the independence of Joanne St. Lewis. I asked him whether - what Mr. Rock wrote in this

paragraph, the one last point paragraph here, whether that was accurate and he agreed that those statements about Joanne St. Lewis' independence were accurate. I asked him why he had written Tab 8 of the compendium here. He wrote, Tab 8, to Joanne St. Lewis and Allan Rock, after she had submitted the final report, and in his mind, this is a major contribution to the university community. And Mr. Major testified that U of O is a community of students and profs. If something causes upheaval, the whole community is affected. The SAC report was toxic and poisonous. It accused the university of systemic racism, which affected both students and professors. And Professor St. Lewis' evaluation was an anecdote to restore student confidences in appealing their marks. And he also noted that Ms. Gervais' boss, a guy name Seamus Wolfe would meet with him as Academic Provost, as VP Academic, once a month and never, ever raised an issue of systemic racism with him. Never raised that issue. So, they get this report. It's sent to them, giving them - they got seven days or something to write a response. Allan Rock asked for an extension. Mireille Gervais wouldn't give him one. She publishes a report entitled, "Mistreatment of Students, Unfair Practices and Systemic Racism." Sensational headline. That's what they did. I asked him, Mr. Major, based on your observations, did Professor St. Lewis enthusiastically toil to discredit the 2008 annual report and did - and he said, "Absolutely

not." And did Professor St. Lewis demonstrate an uncommon zeal to serve the university administration? "Absolutely not." His testimony was she did what a competent and conscientious professor would do when asked and she did so competently.

Tab 11. You recall that just below sting number 7, in the February 11th article, there's a passage in this article that talks about VP Academic Robert Major is also found stating to a concerned citizen or student, that the independent St. Lewis report will definitely resolve the matter of the troublesome SAC report. First of all, that email, it's not in the zip of documents that Mr. Rancourt relied so heavily on, as the basis for writing what he wrote on Exhibit - it's not even one of those documents, those ATI documents that are supposedly exposing this cover-up. But secondly, that student couldn't have cared less about Joanne St. Lewis' report or the SAC report. Robert Major said that student was writing me, telling me that a couple of profs had destroyed his exams so without the exams being available to re-look at and re-mark, they shafted him basically. He was only interested in his own mark. He wasn't interested in - where does he say it here, the troublesome SAC report. This is completely misleading what Mr. Rancourt writes here. And that is what you have at Tab 11, where Mr. Major has a stream of emails back and forth with this student, Mr. Boshwa (ph), where he's -

the student is saying, "No, no, no, I'm not interested in that - those reports. They don't deal with my problem." His problem was two profs destroyed my exams and I can't appeal my mark because the exams don't exist any more. Completely misleading, what was written there.

Cover-up. Again, I'm on Robert Major's testimony. So, I put the same stings to him, you know, the one in Exhibit 3, in this article of February 11th and also the cover-up allegations in the Allan Rock lies, deceptions article that Mr. Rancourt wrote. And this is the testimony that Robert Major gave about an alleged cover-up. It's quite false. It's a bold-faced lie. He said, "How do you dictate to a prof of law what to do?" That was probably a shot at law profs but, you know, it's like herding cats, you know. At least in a law firm it is. Anyway, how do you dictate to a professor of law what to do? Quite ridiculous. It's scandalous. It's malicious and it's untrue. Those were the words of Robert Major about Mr. Rancourt's allegations of cover-up. And then I - you'll recall that I also put to Professor St. Lewis, you know, what did she know about these FIPPA documents which I've reproduced the package of them at Tab 4. So, you see at Tab 4 of the compendium, with all these hand-written notes, 12, 15, 18. You know, these are supposedly the smoking gun that leads Mr. Rancourt to write that Joanne St. Lewis acted as Professor - or President Rock's house Negro. And

5 she said she had no knowledge of documents 18,
12, 15, 21, 22, 24 and 4, 'cause they weren't to
her and you recall, both Mr. Major and President
Rock testified that any internal emails,
Professor St. Lewis didn't know about. They
could've talked whatever they wanted to about
Professor St. Lewis' evaluation report but that
doesn't affect her independence. She was acting
independent at all times. She was not privy to
10 these internal communications of the university
about what to do with her report or about the
SAC's report.

15 And then in a category I'm gonna call, you know,
positive reactions to Professor St. Lewis'
evaluation report, Robert Major said it was a
major contribution to the university committee.
Bruce Feldthusen wrote an email that's at Tab 12
that this is an extraordinary piece of work
20 because she said - and this is what Mr. - the
former dean said. She didn't say there was no
problem, okay? Professor St. Lewis didn't say
there was no problem. She said this needs to be
researched properly. And that hits the nail
25 right on the head. That's what the evaluation
report does. That's what I read to you some of
the passages from. We need to do something about
this. We have a *Human Rights Code*. We can't -
we need to look into this urgently. That's what
she did. And again, you don't have a prof
30 expressing a concern. You don't have one of the
37,000 students expressing a concern. And there

5 were two emails that I discussed with Robert
Major, Robert Major, where there was positive
things said about Professor St. Lewis' evaluation
report. The first one's at Tab 9 of the
compendium. It comes from the Academic Writing
Help Centre. And it's the email at - from Marie-
Lise Blain, where they adopt Professor St. Lewis'
recommendations. They're happy with what she
recommended, they, the Centre for Academic
10 Writing.

15 And at Tab 10, there is an email that comes into
Robert from Francois Chapleau, who is a former
registrar and he read Professor St. Lewis' report
and said four of the recommendations deal with
giving more visibility to our rules on plagiarism
and he comes up with the idea, we should be
putting that in our software for when the kids
register, that they know what the rules are on
20 plagiarism.

Do we need a break? Or water? Your Honour, can
we take a break? We have a....

25 THE COURT: Let's take a break, yeah, for 15
minutes.

...JURY RETIRES (11:38 a.m.)

R E C E S S (11:38 a.m.)

30 U P O N R E S U M I N G : (12:00 p.m.)

THE COURT: All right, bring the jury.

...JURY ENTERS (12:01 p.m.)

CLERK REGISTRAR: All rise. All members of the jury are present, Your Honour.

THE COURT: All right.

CLERK REGISTRAR: You may be seated.

THE COURT: Thank you. Mr. Dearden, you may continue.

MR. DEARDEN: And Your Honour, could I just say to the jury that if anybody gets sick of my voice or needs to - needs a break, just give me the - a time-out. Okay. The third point I'm gonna deal with, members of the jury, are the false statements that are in Exhibits 3 and 4.

Firstly, stings 4 and 8 say that Professor St. Lewis enthusiastically toiled to discredit the 2008 SAC report and that she attempted to discredit the 2008 Student Appeal Report. Those statements are false and even if you don't believe a word of the testimony from Allan Rock, Professor St. Lewis and Robert Major, even if you don't believe a word, those statements that Professor St. Lewis was enthusiastically toiling to discredit that SAC report, directly contradict what Professor St. Lewis wrote and I took you through that at Tab 1, directly contradicts what she actually wrote but secondly, it completely - those accusations fly in the face of what the SAC itself said about Professor St. Lewis' report and that was, as you recall, her recommendations, the 10 recommendations echo what the SAC wanted and the SAC wanted the university to implement those

recommendations, along with their recommendations and not only that, Mr. Rancourt took no issue. I read in, whenever I was last with you, I read in the questions, "You don't take issue with that part of the SAC's response, do you? And that was, St. Lewis concludes her report with 10 recommendations that echo the SAC's recommendations and demands?" Answer at four, at page 4-50 or question 4-50. "This statement, this sentence, I had no personal reason to object to this sentence." Okay? And then for the allegations that the report wasn't independent or that Joanne St. Lewis acted as a house Negro or she had an uncommon zeal to serve the administration, you have the testimony of President Rock. You have the testimony of Robert Major, which corroborate what Professor St. Lewis said and of course, you have documentary evidence. You have the evaluation report itself. It speaks for itself. She wasn't acting as a house Negro. She wasn't serving the administration. I suggest to you, members of the jury, that either Rancourt had never read that evaluation report at Tab 1 of the compendium. He either didn't - he didn't read it or he recklessly disregarded the truth, because he could never come to those conclusions that he came to and make those statements if he read that report. So, he either didn't read it or he just recklessly disregarded it. And further, those 10 recommendations that are in Professor St. Lewis' report, they tell the university to do things.

5 The house Negro doesn't tell the master what to do. Okay? She's telling them to do things, including the number one recommendation, which is conduct an independent analysis of your academic fraud process on an urgent basis.

10 Cover-up? You have the testimony of President Rock and VP Academic Major and Joanne St. Lewis, which is categoric. There wasn't any cover-up. And in fact, Mr. Rancourt admitted in one of the read-ins I gave you at question 2291, he admitted, during his examination for discovery, that Professor St. Lewis was not involved in the cover-up but unfortunately, that's not what he wrote in sting 6. That's very unfortunate, that he admitted she wasn't involved in the cover-up but he wrote she did.

20 So, all of what I've told you, members of the jury, in my submission, supports the conclusion that those statements are false. And now I wanna go to the fourth point, which is malice and I'm gonna review some of the evidence on whether Denis Rancourt acted maliciously, which is a question you have to answer. What is actual malice? Well, it's commonly understood as spite or ill-will towards somebody but it can also be established by showing that Mr. Rancourt knew he was - he wasn't telling the truth or he

30 recklessly disregarded the truth. So, spite, ill-will, knew he wasn't telling the truth or he recklessly disregarded the truth.

Now there's two different types of evidence that you can consider to find whether Mr. Rancourt acted with malice. We have intrinsic evidence and we have extrinsic evidence. And the intrinsic is, you infer from the language of the articles themselves. So, you just look at the two articles, two - Exhibit 3 and 4. You look at the language he used, the tone, the tenor of what he wrote and consider whether that demonstrates malice. I say that he used sensational language. He was abusive and inflammatory in introducing colour into an article that's supposed to be about an evaluation report. There was absolutely no reason to do that. It was disproportionate and on his face, you can see that, in both of them. He calls her a house Negro six times in these two exhibits, 3 and 4.

Extrinsic evidence of malice is any evidence that doesn't deal with the statements in the articles themselves, that you can infer some improper motive on his part and here's what I want you to remember throughout. You can look at his conduct before and after the publication of Exhibits 3 and 4, right up to the day you do your verdict. Okay? Before, after, up to the day of the verdict, you can look at the defendant's conduct and there are factors you can consider on determining malice. Did he omit significant information from these articles? Were there omissions of significant information that contradicted his thesis? Like she acted as a

house Negro. Professor St. Lewis wasn't independent. There was a cover-up. Did he omit significant information and I'm gonna take you to some. Reporting only one side of the story. Was Exhibit 3 and 4 balanced? Not in your life. And I'm gonna deal with that. Did he provide Professor St. Lewis a fair opportunity to defend herself that she acted as a house Negro? She was involved in a cover-up, that she didn't act independently. No. Never contacted her prior to publishing these articles. In fact, in response to the Notice of Libel that I sent him about Exhibit 3, not only didn't he contact her, he wrote the second defamatory article, Exhibit 4, right in her face. It's, "Here's my response." Not - it's amazing. That's what he did and didn't give her an opportunity to respond to Exhibit 4. Where in sting 8, he says he didn't say that Professor St. Lewis acted like a house Negro because she was black. Although I digress for a moment to note sting number 2 says February's Black History Month and it's time to out Black Americans who were and continue to be house Negroes. Oops. I think he did indeed say she was a house Negro, 'cause she's black, 'cause he said it in paragraph 2 in sting number 2, that it's time to out black Americans who were and continue to be house Negroes to masters, which is Professor St. Lewis, whose photo he included, to make sure everybody knew that she was black.

So, failure to provide a plaintiff a fair

5 opportunity to defend themselves is a factor you
can consider as an indicia of malice. Another
one is what were his previous criticisms and
attitudes towards Professor St. Lewis prior to
writing Exhibits 3 and 4? Did he repeat the
libel or encourage others to publish a libel?
Did he show a biased and disdainful attitude
towards Professor St. Lewis and did he apologize
or retract anything, which he did not. These are
10 all factors. Not - no one factor's determinative
and you have to look at them all and the evidence
that you heard in the five days of evidence, to
determine whether that can lead to a conclusion
that Denis Rancourt acted with malice. And I'm
gonna review all nine factors and Mr. Rancourt
acted maliciously.
15

Let's start with omissions. Okay? So, we have
up on the screen and you should have in hand if
you could, please, members of the jury, Exhibit
20 3, because you'll see that Mr. Rancourt has put a
number of links, hyperlinks to material, if we
could get the second column, Anastasia, please?
Number 4, like paragraph 4, there's a number of
links there. And he embeds a video as well, of
25 Malcolm X, in this. But what's missing? What's
missing, members of the jury? You'll see that in
these links, he doesn't link to Professor St.
Lewis' evaluation report. So, the report that
she supposedly wrote, acting as a house Negro of
30 the president of the University of Ottawa, he
doesn't give his readers a link to that report.

And another omission is, you will not see one statement in Exhibit 3, not one statement from Professor St. Lewis' evaluation report. No mention of the recommendations, in particular recommendation number 1, which would've been a good one. Nothing. Not a word from Professor St. Lewis' evaluation report. Why? So, that the readers wouldn't know what she actually wrote, what her report actually said. He did that on purpose. And there's a third omission from Exhibit 3. He doesn't link the SAC news article of December 17, 2008, the one at Tab 13 of your compendium, that the SAC director herself says that Professor St. Lewis' recommendations echo the SAC's recommendations. The one that says, University of Ottawa, we, the Student Appeal Centre, want you to implement Professor St. Lewis' recommendations in our recommendations. He does not link that. What he does link is just after sting number 4, so we're not highlighted on the screen here, but see today's SAC article here, which will be - go ahead - a link to the SAC's February 11th attack on Professor St. Lewis. Okay? It's that one. She takes some pretty good shots, Mireille Gervais does at Professor St. Lewis in that, but he didn't link the December 17, 2008 SAC news article that says that Joanne's recommendations echo the SAC recommendations and they want them implemented. And he - but he did link also to his U of O Watch, his December 6th U of O Watch, he gave that link but he omitted key information that would've told readers what

Joanne St. Lewis actually wrote and what the SAC really thought of her 10 recommendations and he did that, 'cause he didn't want them to know - he didn't want them to know that information. And that is malicious. That's spiteful. And by the way, Mr. Rancourt, he knew all about the December 17, 2008 article. So, that's the one that I've already taken you to and turn to Tab 15, if you would, please, of the compendium, the very last two pages. See, it's not like, oh, I didn't know that the SAC wrote that December 17, 2008 article, because what you should have at Tab 15, at the last two pages, is an email from Mr. Rancourt to Mireille Gervais, December 11, 2008. And he - she is - she's asking him for his thoughts on an SAC news article. So, she - the SAC director is actually asking for Mr. Rancourt to help her write her news article about the - Professor St. Lewis' report. 'Cause she says, "What do you think of this much delayed blog post?" And he says, "Fantastic post. Very clever. See my small suggestions attached and track changes." So, if you look at the next page, this is Ms. Gervais' draft and he does make track changes but he doesn't make a track change to Ms. St. Lewis concludes her report with 10 recommendations that echo the SAC's recommendations and demands, right in the middle of that page, and the last paragraph, he doesn't make track changes to either. The University of Ottawa's not yet taken any action to implement the Joanne St. Lewis and the SAC's

5 recommendations. So, he knew about it. He
didn't make track changes to those two very
important facts but he never included it in
Exhibit 3 or 4 because he, members of the jury,
was not gonna let truth stand in the way. Not a
bit. Not gonna let truth stand in the way. That
information completely disproved, completely
contradicted his thesis that Joanne St. Lewis
wasn't independent; acted as a house Negro and
10 was involved in the cover-up. And same thing
goes for Exhibit number 4. There's no link in
the May 18th, 2011 article. It's got something
like 19 links in this May 18th article, but you
will not see a link to Professor St. Lewis'
evaluation report in this article either and you
15 won't see a word about Professor St. Lewis'
evaluation report in this Exhibit 4 but he does
call her a house Negro three times and he does
provide a link to Exhibit Number 3. He provides
a link again to, "Did Professor St. Lewis Act as
20 Allan Rock's house Negro?" And nor did he
include, in Exhibit 3 or 4, information from the
FIPPA documents that say, "Joanne St. Lewis was
independent." You recall Exhibit at number -
25 what was it - two of the compendium, Allan Rock's
email of November 17th, 2008 where he says, "We -
we've - our dealings with her have been
scrupulously objective." He refers to this email
in Exhibit 3. Okay? This is one of the FIPPA
30 documents, the *Access to Information Act*
documents that are supposed to reveal this or
expose this cover-up and that Professor St. Lewis

5 was - wasn't acting independently but you don't
see a word of what Allan Rock actually wrote in
this email in Exhibit 3 or 4. He omitted those.
Why? Again, his thesis is destroyed. The
president of the university is telling his
internal group, she's been independent so far,
don't blow it. We're gonna make sure she remains
independent and her only point of contact is
Robert Major. But not a word. He had that
10 document and didn't quote a word from it, 'cause
he didn't want his readers to know that Allan
Rock was confirming, had actually confirmed in
those ATI documents, that she was acting
independently.

15 Members of the jury, not only doesn't Exhibit 3
and 4 include the gist of Professor St. Lewis'
side of the story, there's not a word of her side
of the story. You have intentional omissions.
20 You have him falsely portraying that Professor
St. Lewis was a non-tenured professor when she
was granted tenure 10 years earlier and you'll
see the letter from Dean Feldthusen at Tab 47 of
the compendium. She was granted tenure in 2001.
25 It was reckless for him to publish that she was
non-tenured but why? Why is the tenure even
mentioned in - why does he put that in the
article? Okay? There's no need for someone to
be tenured to evaluate the Student Appeal Centre
30 report. That's not a qualification that you have
tenure or you don't have tenure. He wanted
people to think she was non-tenured as opposed to

5 a tenured prof because she wasn't independent.
See? If you're tenured, it's pretty hard to
touch you at the university. Okay? But if
you're non-tenured, you might be looking for a
reward and you might want to be doing something
to please your administration. That's why he
stuck that word - those words in there, that she
was non-tenured, 'cause there was no necessity to
mention tenure or non-tenure except to plant the
10 seed in a reader's mind, okay, a non-tenured
professor who's uncommon zeal to serve the
university administration. That's sting 5. The
untenured - the non-tenured Professor St. Lewis
uncommon zeal to serve the university
15 administration. There's no balance whatsoever,
members of the jury, in Exhibits 3 and 4, no
balance. Those articles, in my submission, are a
drive-by character assassination of Professor St.
Lewis. That's what they are.

20 The next factor you consider is did the plaintiff
get an opportunity to defend herself from what
was written in Exhibit 3 and 4? And she didn't.
He admitted, "I never contacted her prior to
25 publishing those two exhibits." Why? Why?
'Cause his mind was made up before he published
Exhibits 3 and 4. His mind was made up. If you
could turn to Tab 5 again, please, of the
compendium. I took you to one of the passages
30 about a report that you'll find in the U of O
Watch list of Allan Rock, Lies, Deceptions,
Evasions and Hypocrisies, and that was the cover-

up one but there's another one. Go to the third - so it's the third page in, that tab but it's page 6 of 14, right at the bottom. It says,

"Directed the spin and the production of a fraudulent internal report intended to cover-up evidence for systemic racism at the University of Ottawa. The internal report by a non-tenured staff, on which Rock personally made text modification suggestions, was presented as an independent report and publication. The reports obvious main purpose was to discredit a student union report about systemic racism in the university student appeal process."

And Mr. Rancourt admitted, during his examination for discovery, and I read this in, that the non-tenured staff that he's referring to in this bullet that talks about a fraudulent internal report, is Professor St. Lewis and the internal report that he's referring to that's fraudulent, is Professor St. Lewis' evaluation of the SAC report. He admitted that. Okay? So, his state of mind was Professor St. Lewis' evaluation report was fraudulent and his state of mind was the evaluation report was intended as part of a cover-up. Those statements, I suggest to you, members of the jury, demonstrate his spite towards Professor St. Lewis. He is accusing a lawyer and a law prof of producing a fraudulent report. That says it all. That is pure vicious, callous malice. This report was not fraudulent.

5 So, that's the first example of his state of
mind. December 6, 2008, he wrote about Professor
St. Lewis' evaluation report and you'll find that
at Tab 14 of your compendium. It's an article
entitled, "The Rock administration prefers to
confuse independent with internal rather than
address systemic racism." He wrote two
paragraphs, I draw your attention to. On the
10 second page at Tab 14, where you see the
sidebars, the lines on the side, at the bottom -
the last two paragraphs.

"So, students who would attempt to pass
an internal report...."

15 And remember members of the jury, this is
December 2008. So, three years prior to writing
Exhibit 3 and 4, he says,

"Students who would attempt to pass an
internal report as an independent report
would probably be accused of academic
20 fraud but such intellectual dishonesty
appears to be acceptable to the
institution for a report denouncing
student association allegation of racism
in treating academic fraud cases."

25 And then if you go to the end of that article.
Okay? Again, I've drawn lines beside the passage
I want you to look at. He re-states St. Louis'
recommendation one and then he says,

30 "Wow, and this would not have a chilling
effect on students' willingness to
pursue their legitimate claims that St.
Lewis suggests is the effect of the SAC

report. So after all this, according to St. Louis, the best thing to do now, since it's obvious that there cannot possibly be systemic racism at our U of O is to get the SAC data and shred it, so it can't hurt us anymore. Brilliant. I predict that St. Lewis is in line for a promotion to associate professor soon."

Okay? This is his state of mind. So, three years prior to writing Exhibit 3, he's made up his mind that Professor St. Lewis is gonna get a reward for writing that report. She's gonna get a promotion. Okay? And he'd also made up her [sic] mind that her report would be considered academic fraud. And then he point-blank said in the other article I showed you, that it was a fraudulent internal report. So, I asked Professor St. Lewis, during her examination in-Chief, what she had to say about these statements I just read to you and she testified that he's accusing me of being a hypocrite; that I'm unfit; that I have no professional integrity as a lawyer and an academic; that I perpetrated a fraud on misleading the public is very upsetting to me. And on the shredding of the documents, Professor St. Lewis testified,

"The idea that I would shred data is equivalent that I would destroy evidence. So, to so distort my

5 recommendations around data is a
 personal attack. Sarcasm. No respect
 for me as a colleague at U of O. This
 has been sitting out there. I was
 shocked when I read this. You can't
 read my recommendation one this way. I
 was stunned. I was shocked that this
 came from another academic."

10 And then I asked Professor St. Lewis what did she
 have to say about Mr. Rancourt's prediction that
 she was in line for a promotion. Okay? And she
 said, that was snide. It's untrue and also, drew
 your attention, members of the jury, that Ms.
15 Gervais, herself, was quoted in an Ottawa Citizen
 article that the report is not scientific; that
 the SAC's report was not scientific but you won't
 see Ms. Gervais' quote in any - in Exhibits 3 or
 4 that her SAC report was not scientific. He, of
 course, that was omitted.

20 And then the evidence come out that, speaking of
 one-sided, like 100 percent one-sided in favour
 of the SAC and Ms. Gervais' report against
 Professor St. Lewis and Professor St. Lewis
25 report, is Mr. Rancourt had quite the
 relationship with Ms. Gervais, prior to writing
 Exhibits 3 and 4. He admitted that he had
 communications with Gervais about that report
 prior to its public release. So, prior to Ms.
30 Gervais sharing it with the university in
 November of 2008, she had communications with him
 about that and told him about her conclusions.

5 And he said, "She consults me for things relating to her work and I've known Gervais - Ms. Gervais for many years and we have a relationship in which I give her information about the operation of the university, where I give her advice."

And Ms. Gervais consulted Mr. Rancourt on how to interact with the upper administration and that was about the cover letter that she was gonna send them, attaching the annual report. Okay?

10 She was seeking Mr. Rancourt's advice on the content of that cover letter and you have that at Exhibit or Tab 15 of the compendium and I put all the emails in one tab, at Tab 15. Okay? It

15 starts at Ms. Gervais writing Mr. Rancourt, "Do you think I'm missing anything?" And then he - if you turn the page, so we've divided the emails by green sheets here. He says, "It's perfect, but I would've stated this and I like the approach." Okay? He obviously has knowledge,

20 'cause he's telling her what goes in the cover letter. She writes back on the next email, on the 8:36 p.m. email, "Thank you. I will send tomorrow morning. I'm happy with the cover page. Mireille." And then you see at the next email,

25 an email of Ms. Gervais, December 11, 2008, "What do you think of this much delayed blog post?"

And we've already looked at this. He says, "Fantastic post. Very clever." This is just - turns out to be her December 17, 2008 blog.

30 That's the very last email exchange between them. Okay? So, that's communications that they had about the SAC's report itself but his bias really

comes to the fore, the day he publishes Exhibit number 3. Okay? February 11, 2011. Turn to compendium Tab 16, please. Okay? Mireille Gervais to Denis Rancourt. "What do you think?" February 11, 2011, 2:38 p.m. "Freedom of Information documents prove Joanne St. Lewis lack of independence from central admin." Next Tab 17. Rancourt to Gervais. "It's good but better you show instead of prove. Understate is best here. How about access to information shows U of O cover-up of systemic racial discrimination report minimization or U of O cover-up campaign to discredit racial discrimination report access to information show us." The last one is my favourite. "Yours is good and more specific. I think that cover-up is the big malfeasance issue here. They covered up the lack of independence and their interference. Cover-up is the major wrong-doing that directly implicates Rock and Major and the other top people."

Next page. So, that one he sends at 3:20 p.m. Okay? At 4:39 p.m., February 11th, 2011, Ms. Gervais sends him two links, which are two her SAC news article of February 11th that we had just put up on the screen there. And with a smile sign. Okay? She's got the happy sign and Mireille. And he writes back - oh, oh, no. Oh, go back to Tab 18. No, now the reline is *Joyeux Noel en retard*. Okay, was - first ones were title idea but now when she sends him what she wrote, she's sending him a late Christmas

present. Okay? And he writes back what you see at Tab 19, under "*Joyeux Noel en retard*. I am crying with joy. That is the most best X-mas present I ever got. I love you. Denis." Okay? This is all before he publishes Exhibit number 3, members of the jury. Okay? He's crying with joy and he publishes his house Negro article, Exhibit 3, at 6:40 p.m. It's on Exhibit 3, 6:40 p.m. Okay? You see it under the blacked out, which the Malcolm X video. You'll see that it's posted by Denis Rancourt, 6:40 p.m. Four minutes after he's crying with joy, and he says I love you to the director of the SAC. So one, Mr. Rancourt was so biased in favour of Ms. Gervais and the SAC and against Ms. St. Lewis that once again we see she consults Mr. Rancourt for what she should be writing in the Student Appeal Centre news article. Okay? And he's telling her the cover-up was the big malfeasance. Of course, the readers don't know any of this interaction between Ms. Gervais and Mr. Rancourt. They don't know. And you remember I read in a written answer that Mr. Rancourt gave about why he was crying with joy and why this was the best X-mas present ever. It is the most ludicrous, nonsensical explanation, 'cause it was, as you recall. Oh, that wasn't the best X-mas present at all. We don't exchange X-mas presents. It was humour. I don't see any humour in crying with joy, the best X-mas present ever, in a reply to Ms. Gervais, sending a link to her article, which is gonna have these access to information

documents released for the first time. And she calls it a late Christmas present. Okay? Now, his bias is palpable. Okay? The malice, in my respectful submission, is just overwhelming. That email of any piece of evidence you have says it all. How biased and prejudiced against Professor St. Lewis this man was. Who wasn't independent? Denis Rancourt. That's who wasn't independent when he wrote Exhibits 3 and 4. And then we - so that's, you know, the disdainful attitude, the prejudgement, the bias, the complete imbalance; all factors you can consider in deciding whether he acted maliciously but remember, his conduct after he published Exhibit 3 and 4 can be taken into account.

And remember - I'm now gonna deal with the comments that he approved, that he screened, that he allowed to be published on his U of O Watch site and his Activist Teacher website, after he was sued. A defendant in a libel action. Okay? If you look at Tab 50, the third of 53. There are numerous comments that I'm gonna take you to these in detail, when we get to the damages part of my submissions, which will be after lunch but at Tab 50, 51, 52, 53 are all comments or takedown notice of, you know, English Works who wrote the Bah, Bah, Black sheep comment and other just really distasteful, vicious comments about Professor St. Lewis that he had total control before they made it on his website to just reject but instead, he published them. That's evidence

of malice but it's really gonna be evidence of damages caused to Professor St. Lewis.

Now, on the theme of his three-year campaign of cyber-bullying of Professor St. Lewis. He's done everything he can to draw as much attention as possible to his house Negro articles and his defence that he didn't do anything wrong. Okay? And I'm gonna review some of the emails that he sent out to the mainstream media, that he sent out to student newspaper editors at U of O as well as Carlton and University of Toronto and across the country. The goal of his websites, his Tweets, his Facebook posts, his emails to the media, was to embarrass Professor St. Lewis. He went after her. He deliberately broadened the dissemination of his libels. We, first of all, know that after he published these two articles at Exhibits 3 and 4, in Volumes 2(a), 2(b), and 2(c), so Exhibits 5, 6, 7; about three inches worth of material, he published 68 U of O Watch articles about Professor St. Lewis in this case and he published another seven on Activist Teacher, which you will find in these volumes; another seven. There are numerous takedown notices that I sent him about some of those articles. And you'll find at Tab 45 of the compendium, the package of notices of libel and takedown notices that I've sent him during the past three years. And it's Tab 45. It starts with the May 16, 2011 notice. He publishes Exhibit Number 4. We give him another notice on

May 20th that you'll find in here and then we've given you some, not all, of the future takedown notices. I've told him that failure to take down publications will constitute malice and can aggravate damages. He knew that early on. It never deterred him. He was given fair notice, what you're doing to the evidence of malice, evidence of aggravated damages, evidence of punitive damages; he ignored it, on purpose. He tweets. He tweets at Tab 20. We gave you one example of a Tweet at Tab 20, a National Post article about the lawsuit against me. That's the Tweet he sent. He sent out a Facebook message that we put in here, just one example, that's at Tab 21 of the compendium. Consider attending the motion hearing of October 6th, 10:00 a.m., Elgin Street courthouse, et cetera, et cetera, in the crazy case of defamation lawsuit against me. And Joseph Hickey replies, "I'm going to this."

Contacting the media. It's Tab 21 of your compendium. This is when he writes this looks like over 70 mainstream reporters and attaches these - the statement of claim. It says June 23rd, 2011. And gives his contact information. That led and note that Mr. Stephen Lendman is in this email list and I'm gonna be dealing with Mr. Stephen Lendman a little later on some of what he wrote about Professor St. Lewis. So, Mr. Rancourt sends mainstream media and this Mr. Lendman the claim and he gets attraction at Tab 23. You have Tom Spears of the Ottawa Citizen

writing the online article in the Citizen, June 24th, which of course, repeats that - what Mr. Rancourt wrote. And at Tab 24, the print edition of the Ottawa Citizen on Saturday, runs Mr. Spears article. And then you'll recall in the evidence, a number of other post media newspapers or the owner of the Ottawa Citizen post media, a number of the other papers picked up Tom Spears' article. So, when - as I recall Windsor, Victoria and somewhere in one of the Prairie provinces get - they pick it up. At Tab 25, you have Mr. Rancourt writing the student editors. And to me, this is beyond malicious. Actually at Tab 25, tells me where - what other papers picked up, so it was Vancouver - Vancouver, Edmonton, Windsor and Canada.com, all picked up Tom Spears' article. He's giving links. But this one is incredible, members of the jury. He writes an email June 25th, 2011 to student editors and student union members. Okay? So, he hits the Fulcrum, which is the English U of O student newspaper. He hits *La Rotonde*, which is the French student newspaper at U of O. He hits the *Charlatan*, which is Carleton University student newspaper and then the *Varsity*, which is U of T and all these other - he writes them. He writes them and says, summer issue, back-to-school news recap. The MSM, so the mainstream media, have found it newsworthy and he leaves his contact information. Why would he do that? That is spiteful. It's encouraging students in Professor St. Lewis' workplace to write about the fact that

5 there's a lawsuit going on about an article in
which he called her a house Negro of the
president of that university. He's actually
encouraging the kids to do a summer issue or a
back-to-school news recap, because the mainstream
media found it newsworthy. That is spiteful.
But he's not done.

10 Next Tab, 26. Rancourt files statement of
defence and he writes to more people, at least to
my eyes, it looks like a lot more people in the
mainstream media, and this one includes Steve
Lendman as well. So, you've got him attaching a
statement of defence and if you want more
15 information he leaves his home phone number for
anybody to call. So, he's got his defence out
there, to mainstream media. The next tab goes to
student newspapers. He sends out a similar email
with a statement of defence to the student
20 newspapers, including the Fulcrum, *La Rotonde*,
and the Charlatan here in town. And what did
that statement of defence say, amongst other
things? I've got extracts of the defence at Tab
28 of the compendium. He was telling hundreds of
25 reporters and student editors and student union
leaders that he has a statement of defence. If
you look at paragraph 24, says that there's a
misrepresentation of one's academic research is
academic fraud. He's saying that Joanne St.
30 Lewis misrepresented her research and that's
academic fraud. At Tab or paragraph 26 he says
that the plaintiff's report infringed the rights

of minority students to be protected from discrimination and impeding the needed institutional response. The leading experts in discrimination, equality rights, anti-racism, is accused in this document that he's emailing to hundreds of people that she infringed the rights of minority students. Next page, he repeats part of his December 6 blog where he accused Joanne St. Lewis of intellectual dishonesty and Roman numeral 10, pleasing the university executives. Roman number 14 on the next page, the blog post suggests the plaintiff, in writing her report, was serving her employer for illegitimately obtained advantage, as I predict that St. Lewis is in line for a promotion to associate professor soon. So, he admits it. Okay? In his statement of defence, he says, she was serving her employer. It was illegitimate obtained advantage and he says that's promotion. Paragraph 40, the next page, the last part of it, questioning the professional ethics of all professors. He brings in ethics. Paragraph 60 - or 49 - that's not what I wanted to mention here. Sixty-one, paragraph 61 or no, actually, paragraph 57. So, page 19 of this Tab 28, paragraph 57, the last couple of lines. "A known black professional woman, a widespread general reputation in the systemic racism, a matter of the SAC report for serving her employer, overacting along the lines of strict professional ethics and responsibility." And 61, he says, "This legal action is improper because it constitutes an

action by direct or indirect proxy." Like Professor St. Lewis reputation isn't affected one bit by Exhibit number 3 and 4, according to Mr. Rancourt. She's just a proxy for the university, in suing him. And in 63, he says, after quoting the *Charter of Rights*, he says, "Having acted improperly or contrary to professional ethics." That's Professor St. Lewis, supposedly acted improperly and contrary to professional ethics. And then 67, the instant action is intended to punish, intimidate and silence the defendant. Wow. That's what he sent out to hundreds of people. But he's still not done. Tab 29, he now focuses on the Ottawa Citizen reporter, Neco Cockburn, and wants him, at Tab 29, this is in August of 2011, to please consider how the Citizen can cover this development in the St. Lewis case. And he attaches some documents that he filed in defence of the motion. But he - it's reaching out to the Citizen. Please consider how you can cover this development. The next page, another email blast, that's August 29th, at Tab 30 of the compendium, expert says no racism. So, he sends that link to that supposed expert report to all of these reporters. This is some of what he was doing during this action to bring to the attention of third parties and to broaden the dissemination of this libel, throughout the country, is what he did. And I asked Professor St. Lewis about all these communications in her examination in-Chief and she testified that colleagues were talking to me. They were

5 stopping me on the street. They said that I saw
the article in the Citizen and that changed
everything, because it's one thing for the blog,
okay, now that was a problem because when you
Google search it comes up as, you know, on the
front page of her Google search results but now
it's in the Citizen and Professor St. Lewis
testified that heightened the tension making me
notorious. That heightened the tension making me
10 notorious, here in Ottawa, where she lives. In
talking about the Saturday Citizen article of Tom
Spears, she said that's the one everybody reads,
the Saturday paper. My neighbour saw it and they
asked me, "What's this about? What is he saying
about you?" I asked her how did that make you
15 feel, when Mr. Rancourt is sending out an email
to Neco Cockburn of the Ottawa Citizen, asking
the Citizen to consider this development in the
St. Lewis case. She said she felt powerless.
Nothing I could do. His constant repetition of
20 the same false message. The whole thing is a
false construction of what I did and who I am. I
can't get out of it but others are getting drawn
into the distortion. I try to go to work. I
live in Ottawa. My neighbours read it. I live
25 here. My neighbours don't know what I do. It's
not me. What impact did it have when you
discovered Mr. Rancourt was emailing hundreds of
mainstream reporters and student reporters,
30 soliciting them to write stories about you? I
was heartsick. I never denied racism. This is
the way I'm going to be seen, that I lacked

integrity and I was unethical. And then you'll recall, and I'll stop at this, if I could, Your Honour. The evidence that Professor St. Lewis gave about this lawyer Ed Corrigan. He's an immigration lawyer and he had written to a law union list, so a bunch of other lawyers that are part of this law union group that deals with social justice issues. He - this guy Corrigan, this lawyer, is writing and saying that Joanne St. Lewis was involved in Mr. Rancourt's termination as a prof at U of O, which is completely false. She had nothing to do with that. But his - Mr. Rancourt's emails and his website publications, his Tweets, his Facebook messages, they're getting interpreted by people who are reading them and Professor St. Lewis says a lawyer could read a combination of information and come to the wrong conclusion. I felt helpless. That night was a very bad night. I threw up, I was so sick. People would see me through this lens that I would campaign for someone to lose their job. Nobody was reading my report. Recommendation number one, nobody was reading it. It was like a runaway train. So far from what I did and so far from who I am. Somebody in Saskatoon will have a view. Corrigan, he's writing to this law union list. That is where I developed my reputation for social justice, the Law Union of Ontario. And she received this communication that Mr. Corcoran [sic] had sent out - or Corrigan had sent out to the law union list from one of her former

5 students that let her know that he was writing
about her like that. Extremely damaging but also
extremely malicious on Mr. Rancourt's part, in my
respectful submission, about his attitude and
what he thinks a libel defendant can do in a
libel case. Your conduct is relevant to the time
the jury makes the verdict and he was warned,
repeatedly, and didn't care. So, ladies and
gentlemen, we'll take a lunch break and I'll deal
10 with - briefly with the conduct of his defence,
some intrinsic evidence of malice and then get
into the meanings question and then damages.
Thank you, Your Honour.

15 THE COURT: All right, so we'll take a break
until two-fifteen.

CLERK REGISTRAR: Court is in recess until two-
fifteen.

...JURY RETIRES (12:57 p.m.)

20 R E C E S S (12:57 p.m.)

U P O N R E S U M I N G: (2:14 p.m.)

25 THE COURT: ...endorsement on the issue of the
questions, which I have forwarded to counsel
already, but it should be part of the record now.
That is, that's the endorsement I made and that
is in relation to my decision on the - what
questions - what would be the exact content of
the questions. All right? So, are we ready then
30 for the jury...

MR. DEARDEN: Yes, sir.

THE COURT: ...now? Call the jury in.

...JURY ENTERS

(2:17 p.m.)

CLERK REGISTRAR: All rise. All members of the jury are present, Your Honour. You may be seated.

THE COURT: Good afternoon. Mr. Dearden, you may continue.

MR. DEARDEN: Thank you, Your Honour. Members of the jury, where I stopped was in reviewing some of the evidence of malice that you've heard over the five days. We're now going to get into the conduct of the defence, which is also relevant to malice. You've heard some of the pleadings that Mr. Rancourt made in his statement of defence. You'll recall that Professor St. Lewis talked about how this circus began three years ago where we're in cross-examination of Mr. Rancourt, it's private. I told him it was private. He comes with three strangers and Professor St. Lewis said we went ahead with the cross, three people staring at me. I felt uncomfortable and disturbed. They didn't leave and what we had to do was get an order that actually said, you know what, Mr. Rancourt, strangers can't come in to private cross-examination. So, we got an order from Master McLeod to prohibit members of the public attending and staring at Professor St. Lewis as part of these proceedings.

There was another part of this three years of litigation with Mr. Rancourt where he filed a document that accused Professor St. Lewis of false sworn statements, and you'll find that at

5 Tab 39 of the compendium. So, he's filing a
factum. It pertains to his friend, Mireille
Gervais, the director of the Student Appeal
Centre. It's at Tab 39 and there was two places
in this document. The first page you'll see,
page 3 of 12, it's paragraph 3. You see that he
says, "The purpose of Ms. Gervais' affidavit is
to establish that the plaintiff made false sworn
statements." And then he repeats that again at
10 paragraph 24 on the next page, "The sworn and
hard exhibit evidence of the defendant, Gervais,
shows that the plaintiff repeatedly made false
sworn statements regarding a meeting, which the
plaintiff incorrectly alleged."

15 You see this defendant, members of the jury, he
wouldn't, you know, consider that maybe there's
just a recollection issue here. Ms. Gervais had
the recollection of when a meeting took place.
20 Professor St. Lewis had recollection. No. He
leaps right to saying, "Oh, she made false sworn
statements." Well, who says that Ms. Gervais'
recollection is right or wrong. He does. False
sworn statements of a lawyer. He's filing this.
25 It's a public document. He's filing it. There's
people present when the motion - people in the
courtroom when the motion's argued and you have a
lawyer being accused of making false sworn
statements. And again, it, you know, it may seem
30 a little strange to you, but in a libel action,
it may be the only kind of action. A defendant
just can't mouth off about anything, even if

5 they're a hundred per cent correct, when they are
a defendant in a libel action. You have to be
very careful about your conduct in defending a
libel action, whether you're the Ottawa Citizen
defending a libel action or whether you're just
an individual person defending a libel action,
the rule's the same. Your conduct can and will
be used against you as evidence of aggravation of
damages, punitive damages and malice but not for
10 him.

15 Anyway, as Professor St. Lewis said, they blogged
about this. Gervais gave media interviews in
student media U of O about this. There was a big
page exposé in La Rotonde about the date of this
meeting and what Mr. Rancourt was alleging. All
leading to where Professor St. Lewis sort of, you
know, gave a recap of what it was like to be in
three years of this litigation. How the
20 defendant spoke of the case continuously, said
there was no basis for what Professor St. Lewis
was saying, that she wasn't harmed. He was
writing things that went directly to her
integrity. It was accumulation. And I'm reading
25 from my notes that I wrote down as Professor St.
Lewis was testifying. Accumulation, all layering
on top of me. Each blog post after a court
appearance. His blog generated other blogs. It
was like a cluster bomb of the information tying
30 me back to being a house Negro. I tried to
teach, do my work. As it mounted it was more
difficult, you know, the tsunami. It was more

difficult. People were asking me - somebody called you a house Negro. I would give anything to have one month where I was anonymous and not this person, but it never let up. Then there was an abuse of process motion. You remember Professor St. Lewis was teaching us about this archaic term called champerty in maintenance and - because the University of Ottawa president Rock agreed that he was going to support an employee and pay for the legal fees in bringing this action for an employee that did something for the university and then got called as acting as his house Negro and so he claimed this action was an abuse of process, like, as if she had no reputation to protect and that he never defamed her and there was nothing wrong here. "He was saying I was a person abusing the system. That I did something improper." That's what he was alleging in that motion, abuse of process motion, which he lost all the way up to the Supreme Court of Canada. It was rejected at every level. This court's level, the Court of Appeal in Toronto and the Supreme Court of Canada denied leave. He lost at every level but the harm was still there. It took two years to go through that. There were many proceedings in that alleged abuse of process brought by this defendant and it was blogged about and to quote Professor St. Lewis' testimony, "It reinforced that I did something unethical and unprofessional, that I was a stooge of the University of Ottawa." And lastly, that she had broken her barrister's oath when she

5 swore the barrister's oath to become practising lawyer in this province that said you can't commit champerty. So, he was alleging that she did, and he was wrong but it was a painful process for Professor St. Lewis to get through and deal with the never-ending appeals and motions and blogging that was done about that motion.

10 Then he also claimed that this litigation, this lawsuit was a proxy lawsuit for the University of Ottawa and I read that passage of paragraph 61 in the Statement of Defence and Professor St. Lewis, when I asked her well - about that paragraph, she says it's saying I'm dishonest; that I'm standing in for University of Ottawa; that I'm part of an inappropriate use of government funds and she isn't. The courts have ruled on this. So, that's just a sample of some of the evidence of malice, extrinsic evidence of malice.

20 I've spoken to you about the intrinsic evidence of malice like the words themselves, the sensationalism, you know, the headline. Putting her - Professor St. Lewis' photograph where it's put right underneath that headline, you know, the big cover up exposé apparently in these access to information documents, which you won't see and most of which Professor St. Lewis had no idea about. So, there - you can also, as evidence of malice, look at the words that he used in both Exhibits 3 and 4, the articles in issue.

So, you have one question on this in the book of questions and, Your Honour, can I give the jury a - the book of questions now to show them...

THE COURT: Yes, you may.

MR. DEARDEN: ...the questions? So, the malice question you'll find at Tab C and that was, simply put, was there actual malice on the part of the defendant, Denis Rancourt? And you answer yes or no.

The way I've divided this up, by the way, is the Section A is the words complained of, in fact, defamatory. So, each tab number, like A(1), A(2), A(3) matches the paragraph numbers that we have in the Exhibit 3. So, they all match. And I'll be taking you to those in a second.

So, to sum up on malice, members of the jury, Mr. Rancourt was spiteful. He was reckless with the truth. He wasn't interested in the truth. His mind was made up. That's why he never provided Professor St. Lewis an opportunity to defend herself, as you saw those articles before. She wrote an internal fraud unit report. And she was in it and she was gonna get a promotion. No opportunity to defend; never published a word from her evaluation report; never published a word that provided her side of the story. It was a 100 per cent imbalanced [sic], a totally hundred per cent unbalanced article, Exhibit 3 and - or articles Exhibit 3 and 4, omitted anything that Professor St. Lewis wrote. And why

5 did that happen? Because he was crying with joy. This was the best Xmas present ever for Professor - or for Mr. Rancourt. That's why. And that says it all, in my respectful submission. So, that's malice.

10 Point 4 is, are the words in paragraphs one to eight defamatory? But first to remind you, what is defamation? What is defamation? Defamation's a publication, which tends to lower a person in the estimation of right-thinking members of society. It tends to lower a person in the estimation of right-thinking members of society or that exposes a person to hatred, contempt, 15 ridicule. That's defamatory too. It exposes a person to hatred, contempt, or ridicule.

20 Put another way, a defamatory statement is one which has a tendency to injure the reputation of the person to whom it refers. It's a statement that lowers that person in the estimation of right-thinking members of society. It lowers that person in the estimation of right-thinking members of society, and in particular, to cause 25 that person to be regarded with feelings of hate, contempt, disesteem, dislike, ridicule.

30 And then we have archaic terms in law of libel. You have false innuendos and you have true innuendos and it's really hard to get your head around the concept. The false innuendo is just really, here's the natural and ordinary meaning

of the words complained of. So, what do those words mean on the face or from an inference or an implication? And that's known as a false innuendo. Okay? So, I'm looking at the words in paragraph 2, for instance, "February is Black History Month in Canada and the U.S. U of O Watch believes it's the right time not only to honour black Americans who fought for social justice against masters, but also to out black Americans who were and continue to be house Negroes to masters."

So, you can look at the words and see if there's a defamatory statement just straight out of those words or by inference or implication or insinuation, meanings that flow from them. And we'll be getting to those meanings in a second when I take you to Tab 8, 1 to 8. So, and in doing that, you're allowed to look - in fact, you have to look at the article as a whole. You look at the whole article. You look at content, context. Context is everything. And you look at the manner in which these words are presented, and then you determine, do they have the meanings that we're about to look at? And that's natural and ordinary meaning. It's called a false innuendo, 'cause it's defamation that arises from inference or implication.

So, let's look at the first sting, which is Tab A(1) of your questions. And that is, once again, they match how I've numbered them in Exhibits 3

5 and 4. So, did the words - or so the first sting is, "Did Professor St. Lewis act as Allan Rock's house Negro?" And the meanings alleged, so did the words - you have to answer yes or no, did the words, "Did Professor Joanne St. Lewis act as Allan Rock's house Negro?" bear the following natural and ordinary meanings alleged by the plaintiff?

10 The first one, in (a), is, "Professor St. Lewis lacks integrity; (b) it was biased; (c) acted in a servile manner." Okay? Now, what's the context of this? You have the photo of Professor St. Lewis right underneath, immediately below that headline, "Did Professor Joanne St. Lewis act as, as Allan Rock's house Negro?" And then you have the lead paragraph that I just led -

15 read to you, which is sting number 2. Okay?

20 "It's time to honour black Americans who fought for social justice against masters, but it's time to out the black Americans who continue to be house Negroes for masters."

25 And the house Negro you see the next sentence - "The term house Negro was defined by Malcolm X in his famous, the house Negro and field Negro speech. See video below." And that's the video here. And I've transcribed that video for you at Tab 42. Okay? That's the - that's what the

30 readers are directed to. "The term house Negro was defined by Malcolm X in his famous house Negro and field Negro speech. See video below."

So, what does that say?

5 "Back during slavery when black people like me talked to the slave, they didn't kill him. They sent some old house Negro along behind him to undo what he said. You have to read the history of slavery to understand this. There were two kinds of Negroes. There was that old house Negro and the field Negro.

10 And the house Negro always looked after his master. When the field Negroes got too much out of line, he held them back in check. He put them back on the plantation. The house Negro could afford to do that because he lived better than the field Negro. He ate better. He dressed better and he lived in a better house. He lived right up next to his master in the attic or the basement. He ate the same food as the master and ate and wore the same clothes and he could talk just like his master. Good diction. And he loved his master more than his master loved himself.

25 That's why he didn't want his master hurt. If the master got sick, he'd say, 'What's the matter, boss, are you sick?' When the master's house caught on fire, he'd try and put the fire out. He didn't want his master's house burned. He never wanted his master's property threatened and he was more defensive of

30

5 it than the master was. That was the
house Negro. But then you had some
field Negroes who lived in huts, had
nothing to lose. They wore the worst
kind of clothes. They ate the worst
10 food. They caught hell. They felt the
sting of the lash. They hated their
master. Oh, yes, they did. If the
master got sick, they prayed that the
master died. If the master's house
caught on fire, they prayed for a strong
wind to come along. This was the
difference between the two, and today,
you still have house Negroes and field
15 Negroes. I'm a field Negro."

20 Okay? Not a good thing to be a house Negro,
according to Malcolm X. He wants house Negroes
to be shunned and avoided because he's a field
Negro, Malcolm X. He wants them to be shunned
and avoided.

25 So, you have that and dealing with the context
here of the first sting. And then you have
paragraph 4 of the article where,

"Law Professor Joanne St. Lewis acted
like President Rock's house Negro when
she enthusiastically toiled to discredit
the student report."

30 And sting five, if there was any doubt that this
article means that Joanne St. Lewis was a house
Negro, sting five says that,

"The newly released access to

information records are disturbing far beyond nontenured Professor St. Lewis' uncommon zeal to serve the university administration."

See that's what the house Negro does. He serves. Okay? Uncommon zeal of Professor St. Lewis to serve the university administration.

And sting six and seven say that Professor St. Lewis' efforts were not independent.

So, that's your context. I submit to you that, that question is a rhetorical question. That she is a house Negro. You have the context of the photo. The world knows that Professor St. Lewis is black. That photo was put there deliberately. You're out to - black Americans. She - he's outing black Americans who continue to be house Negroes to masters. That's Professor St. Lewis. "Law Professor Joanne St. Lewis acted like President Rock's house Negro when she enthusiastically toiled to discredit the SAC report, and she had an uncommon zeal to serve the university administration." That means Professor St. Lewis was Allan Rock's house Negro.

The house Negro looks out for the master and in return gets rewards. Okay? The field Negro or the house Negro, he eats better. He dresses better and he lives in a better accommodation than a field Negro.

5 So, the meanings, firstly, acted in a servile manner towards President Rock. He says that she was serving the university administration. That's servile. There's no doubt about it. She enthusiastically toiled to discredit the student report. She had an uncommon zeal to serve the university administration. That goes to whether she was biased and did she lack integrity, along with the other context that you have.

10 So, those are the three meanings for sting one in that context. That's what you've got to think about in answering these questions for those three meanings.

15 Sting number two is,

20 "February is Black History Month in Canada and the U.S. The U of O Watch believes it's the right time not only to honour black Americans who fought for social justice against masters but also to out black Americans who were and continue to be house Negroes to masters."

25 It's my submission to you, members of the jury, that Joanne St. Lewis falls into the out black Americans who were and continue to be house Negroes to masters, when you look at the context of this article as a whole.

30 Again - and I'm not gonna repeat everything. You have Malcolm X's definition of house Negro/field Negro. You have paragraph 4 saying she

enthusiastically toiled to discredit the student report; 5, serve the university administration; and 6 and 7, she wasn't independent.

5 And the meanings are, she needed to be outed for acting in a servile manner. She needed to be - a servile manner - the first one is to Allan Rock, the president; the second one is to the University of Ottawa as an institution. Thirdly, 10 she needed to be outed for betraying black people or other minorities for personal gain or advantage and the fourth one, she needed to be outed for acting in authentic manner toward President Allan Rock.

15 So, according to this article in the second sting, Professor St. Lewis wasn't to be honoured as a black American who fought for social justice against masters. It says that, "It's time to out 20 black Americans who were and continue to be house Negroes to masters." A leader's impression is that the nontenured Professor St. Lewis' uncommon zeal to serve the university administration is gonna get her tenure or a promotion. She's gonna 25 get some kind of reward because she's non-tenured and she's doing all these things that this article says she's doing. And she needs to be outed because she's acting in an inauthentic manner. So, what she did isn't real. It's not 30 genuine. It's not authentic is the sting there. What she did for President Rock, according to this article, it wasn't sincere. And when you

look at this, that particular sting, number two, in its context, that's what he means. And the evidence you just heard, in my respectful submission, says it's false.

Sting number three,

"The same spirit prevailed when civil rights icon Ralph Nader suggested that U.S. President Obama needed to decide if he was going to be an Uncle Tom."

So, Professor St. Lewis isn't only a house Negro, she's likened to an Uncle Tom. The same spirit prevailed is what the article says. She's eager to please President Allan Rock. She'll do anything to stay in good standing with the white president of the University of Ottawa and to win his approval. That's where she's enthusiastically toiling to discredit the SAC report. And that's where she has the uncommon zeal to serve the university administration, which is headed by University of Ottawa President Allan Rock. So, she wrote an evaluation report about systemic racism at the University of Ottawa to discredit that allegation for the university but to the detriment of blacks and other minority students affected by that systemic racism. That's what that means.

So, we have meanings flowing from sting three that Professor St. Lewis has put the interest of the University of Ottawa ahead of the interest of

5 black persons or other minorities in order to
serve the interest of President Rock. And the
second one is to serve the interest of the
University of Ottawa ahead of the interest of
black persons or other minorities in order to
serve the interest of the University of Ottawa.
And that she acted in an abjectly servile and
deferential manner to President Allan Rock
because that's what Uncle Toms do. And she acted
10 in an abjectly servile and deferential manner to
the University of Ottawa. Again, that what Uncle
Toms do.

Four,

15 "The Student Appeal Centre of the
Student Union, University of Ottawa,
today released documents obtained by an
access to information request that
suggests that Law Professor Joanne St.
20 Lewis acted like President Allan Rock's
house Negro when she enthusiastically
toiled to discredit a 2008 SAC report
about systemic racial discrimination at
the university."

25 That sting, number four, doesn't even need
context. It doesn't need context. The words in
themselves are defamatory. But the context would
be the same paragraphs that I've already drawn
30 your attention to. She's a house Negro that has
to be outed. She's enthusiastically toiled to
discredit the SAC report. She had uncommon zeal

5 to serve the university administration and her efforts were not independent by any stretch and were covered up. And the meanings of a house Negro about enthusiastically toils to discredit a student report that accuses the university of systemic racism and a house Negro with uncommon zeal to serve the university administration, is one who is servile, who is disingenuous or deceitful to promote the interest of the university; sold herself out and acted without integrity. The five - yeah, the meanings that you see on those three pages, six, seven, eight.

15 The meanings of sting six. The ATI records expose a high-level cover-up orchestrated by Allan Rock himself to hide the fact that the St. Lewis efforts were anything but independent, as she characterizes her report on the first page. THE COURT: Maybe you didn't realize you jumped five, eh? I don't know if you realized that. MR. DEARDEN: I did not, Your Honour. Thank you for that. I guess I'll do that. Five. Oh, five.

25 "The newly released ATI record are disturbing far beyond non-tenured Professor St. Lewis' uncommon zeal to serve the university administration." Now, those words, without context, on their own mean, like on their face, that she conducted - Professor St. Lewis conducted and authored her evaluation of the student report with a view to obtaining tenure or for personal benefit or gain.

Remember she's the non-tenured professor, but she has an uncommon zeal to serve the university administration. And Professor St. Lewis' evaluation is disingenuous or deceitful in order to promote her self-interest and she acted without integrity because she had this uncommon zeal to serve the university administration as revealed by these disturbing ATI documents. But if you put it in context, as well, again, paragraph 2 is outing black Americans who continue to be house Negroes to masters. She's likened to an Uncle Tom. She enthusiastically toiled to discredit the student report, the university cover-up. That's in paragraph 6. That her efforts were any - were not independent by any stretch. In that context, the impression left with the reader, who read the article as a whole, would take paragraph 5 or sting number five to mean that non-tenured Professor St. Lewis authored an evaluation report with a view to obtain a tenure. And that evaluation is disingenuous or deceitful to promote her own self-interests, to promote President Rock's interest and to promote the university's interest. And then if you do that, you're acting without integrity. That's what he's saying.

Sting number six,

"The ATI records expose a high-level cover-up orchestrated by Allan Rock himself to hide the fact that St. Lewis' efforts were anything but independent as

she characterizes her report on the first page."

5 You have all of the context that I've already told you and won't repeat but then there's also, in the last couple of lines of Exhibit 3, just above and below the Malcolm X video, the article says, "When the bosses have such high professional ethics, why would professors be any different?" More on professional ethics of the bosses here, and the here is a link to that U of O watch, July 1st, 2010, article about Allan Rock's lies, the ones that I took you through. So, that's more context, when the bosses have such high professional ethics, why would professors be any different and more on professional ethics here. And those words mean that Professor St. Lewis participated in the high-level cover-up. Now, you see the words say they were - that it was orchestrated by Allan Rock himself to hide the fact that St. Lewis efforts were made but independent as she characterizes her report. So, really, there's three mentions of Joanne St. Lewis in that cover-up sting. And if President Rock orchestrated the cover-up, who was in the orchestra? Well, Professor St. Lewis, from those very words, 'cause she's mentioned three times in that sentence. Her efforts, St. Lewis' efforts were anything but independent as she characterizes her report on the first page.

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5 So, that's the first meaning that she - Professor
St. Lewis participated in a high-level cover-up
of wrongdoing and the second meaning, that she
acted without integrity in conducting and
authorizing her evaluation of the report and
10 thirdly, that she was dishonest in her evaluation
of the student report and fourthly, she authored
an evaluation of the student report that was
disingenuous or deceitful in order to promote the
interests of Allan Rock, the University of
Ottawa, or herself. In other words, anybody
involved in a cover-up of the fact that the
report was described as anything but independent
would be acting disingenuously or deceitfully.

15 The seventh sting is, ironically, the original
SAC report was about racial discrimination
regarding academic fraud appeals such as when an
academic misrepresents his or her work as
20 independent when it verifiably and factually not
independent by any stretch. You have all of the
context I've already given you along with when
the bosses have such professional ethics, why
would professors be any different? The meanings
25 are Professor St. Lewis acted without integrity.
She was dishonest and that she conducted and
authored an evaluation report that was
disingenuous or deceitful.

30 And sting eight is found in the May 18, 2011
article that's Exhibit 4 and it says,

"I did not say that Professor St. Lewis

5 acted like a house Negro because she is
black. I said it because it was
reasonable to conclude in the matter
that she acted like a house Negro and
because it's my reasonable - reasoned
opinion that she acted like a house
Negro. She did so while attempting to
discredit a 2008 Student Union report
10 that alerted the university to its now
more than evident problem of systematic
racism. See all posts about U of O
racism here."

15 And I noted earlier this morning, the sentence,
the first sentence of this sting number eight, "I
did not say that Professor St. Lewis acted like a
house Negro because she is black." Really? The
second sting says,

"It's Black History Month in Canada.

20 The U of O Watch believes that it's time
to honour black Americans who fought for
social justice against masters, but also
to out black Americans who were and
continue to be house Negroes to
25 masters."

30 Black History Month is only for blacks? Black
Americans is who he's referring to. Of course,
he was referring to Professor St. Lewis or was
saying that Professor St. Lewis acted like a
house Negro because she was black.

5 The meanings are the same as like sting one and
sting four. She's a house Negro of President
Rock and that just - you don't actually need
context for number eight, she acted like a house
Negro. By definition, she's servile and the
first two stings are a servile manner towards
President Rock or a servile manner towards the
University of Ottawa. And then the stings (c)
and (d) are,

10 "Acted in an inauthentic manner towards
the University of Ottawa President Allan
Rock and inauthentic manner towards the
University of Ottawa as an institution."

15 Her report just wasn't authentic. It wasn't
real. It wasn't sincere. That's how she acted.
And lastly, that she lacks integrity, which is
meaning number (e) in Tab A.

20 So, those are what we call the false innuendos.
So, you need to, ladies and gentlemen of the
jury, look at the eight stings that you find at
Tab A, one through eight and see if the natural
and ordinary meaning, which includes inferences
25 or implications lead to the meanings that you see
in these eight tabs at Section A of the questions
for jury and answer yes or no.

30 We also have legal innuendo in play here. True
or legal innuendo. What is that? It is - it
arises from facts or circumstances that are not
apparent from the words in Exhibits 3 and 4.

Okay? They're special meanings, special meanings that you wouldn't naturally and ordinarily gain from reading the actual words of the articles in issue.

And that's why Dean Nelson was called as an expert witness to testify about what would the special meanings be to blacks in Canada, to the black members of the black community in Canada. She was asked the - two questions as an expert. Does the expression house Negro have legal innuendo meanings that would be ascribed to the expression by members of the black community in Canada? And she said, "Yes." And then the second question is, what are the legal innuendo meanings that would be ascribed to the expression house Negro by the black community in Canada? And that's where she went through with you her expert report that highlighted parts of the special meanings that house Negro would have for black Canadians.

And you'll also recall - I'll take you to that report in a second, but you recall I asked her at the outset about a part of - one part of her expert report said house Negro was a synonym for house Nigger. And I said, do you have an example of a speech where Malcolm X used the terms interchangeably? And she pointed us to what is at Tab 41 of your compendium, which is the message to the Grassroots. This was a November 10, 1963 speech that Malcolm X gave. And you'll,

if you go to the third page - and we side barred those passages, those paragraphs - he uses interchangeably house Nigger or house Negro when he came up with this term.

And the next tab I - is the transcript of the video that is embedded in Exhibit Number 3. And I had asked Prof - Dean Nelson if that was the initial speech that Malcolm X used or was that the famous speech, 'cause Mr. Rancourt refers to it as the house Negro was defined by Malcolm X in his famous house Negro and field Negro speech. So, just above sting number three. And I said, was that the famous speech Malcolm X delivered in 1963 in which he defined the term house Negro? And Dean Nelson said, "No, that's not the speech. This is a 1965 speech." So, what you see at Tab 42 and what was embedded in Mr. Rancourt's February 11, 2011 article is a 1965 speech, not the initial speech that Malcolm X gave, which you find at Tab 41, which is the message to the Grassroots in 1963.

So, what did Dean Nelson's report say about the special meanings that a black Canadian would ascribe to the term house Negro? So, this is at Tab - her expert report is at Tab 40 of the compendium and the first one is on page 2. We've side barred. And simply put,

"To be a house Negro is to be a sellout to one's race, to be a conspirator and accomplice with those who seek to

oppress black people and to further white privilege and racism. This means to be a black person who did or does the oppressive bidding of the white slave owner or master."

On the next page, on page 3, the sec - the first full paragraph,

"The sting of this insult, house Negro, is especially derogatory, given the treacherous and traitorous nature of the assertion. A house Negro or a house Nigger is untrustworthy, disingenuous and disloyal to his or her own community. To use the vernacular, those accused of being house Negroes or house Niggers are race traitors who throw their fellow community members under the bus to advance their own interest and the interest of their white benefactors. The historical or contemporary white master, in order to remain oppression against their community members. In this way, those demeaned as house Negroes are to be regarded by members of their race with grave suspicion as enemies to the cause of racial equality. For instance, the house Nigger becomes suspect in the eyes of the black majority and their allegiance to the black community is questioned. In folklore, the psychology of the house

5 Nigger is that of someone who despises
his or her own race and who will do
whatever is necessary to look good in
the eyes of the slave owner and other
whites. The meaning of the terms house
Negro or house Nigger is even more
defamatory to those who have a deep
appreciation of black history.
10 Specifically, if one has any sense of
slavery reconstruction, the Jim Crow
era, segregation or systemic and
individualized racism, the meaning of
house Negro or house Nigger is all the
more cutting and offensive. It is my
15 opinion that black Canadians would have
a common understanding that use of the
expression house Negro against a black
person is intended as a racial slur and
meant to taint him or her as a race
20 traitor, a racial defector and one not
to be trusted by members of the black
race. Hence, the house Nigger is a
symbol of the black person who suffers
from internalized racism, who
25 desperately wants to be loved by his or
her white family, who cannot imagine
black autonomy."

30 The next page, page 5,

"To Malcolm X, the house Negro was
traitorous precisely because his or her
well-being was contingent upon the

5 maintenance of the institution of
slavery. The system of legalized forced
bondage of people of African descent
that profited from the denial of the
humanity of those enslaved. Thus, the
self-interested ways of the house Negro
led Malcolm X to conclude that the house
Negro sacrificed his or her integrity
and community in subservience to the
10 master."

And then if you go to page 7, the second
paragraph,

15 "Just as Malcolm X stated that the house
Negro takes pride in being the only one
and would never want to separate from
the master, so too today those cast as
house Niggers are seen as exclusionary
sellouts interested in their own
20 advancement in disparaging or dismissive
of the majority of black people. In
this way those referred to as house
Negroes, house Niggers or Uncle Toms are
cast as sellouts desirous of pleasing
25 their white master at any cost to
themselves or their community."

And then professor or Dean Nelson's conclusion at
page 9,

30 "While Negro is an insulting term seems
to remove some of the rawness of the
racial epithet Nigger and seems less

vulgar, it is nonetheless a racial slur. Indeed, in a modern parlance, in addition to its caricatured racist implications, it adds an element of a pathetic lack of self-awareness of its contemporary connotation. While the urban dictionary states that a house Negro is a black person who rejects their cultural identity to please the white man, generally, less offensive than house Nigger, one does not typically parse such insults with nicety. Indeed, adding the word house to Negro rings as an added insult as it returns the rawness and gravity back to the term as it is more clearly tethered to the demeaning caricatured notion of the slave sellout in perpetual service of the white master of slavery. The demeaning insult is transparent. This is especially the case if, as a journalist or cultural critic, Farai Chideya asserts the word Nigger is the nuclear bomb of racial epithets. Small movement from that point is still a powerful and demeaning insult. To understand the nature and impact of these words, one must simultaneously appreciate that for black people, Negro and Nigger, house Negro and house Nigger have a disparaging, offensive meaning, especially when one understands the

historical resonance. Once used, especially by a white person against a black person, given our history, there is very little that can be said to mitigate the dimensions of these racial slurs."

And then I'll skip to the next and last paragraph,

"Use of the term Nigger is so weighty in its gravity that it's likely the worst insult that a black person can be called. This sense is added to the call by some scholars for greater public regulation of racially abusive hate speech. Given the connection between the expression Negro and Nigger in our contemporary cultural consciousness as terms imposed upon black people, being called a house Negro or a house Nigger, there's legal innuendo to which members of the black community in Canada would describe a negative and insulting meaning. This meaning is firmly rooted in historical context and usage of the terms that lends its weight as a demeaning and offensive indictment. Once leveled, the term is not susceptible to parsing with nicety. Whether the insults are meant something different from the common understanding, or did not intend it to be insulting, or

5 assert some complementary meaning, the
commonly ascribed understanding of house
Negro amongst black Canadians and
Americans is as described as above as a
potent, assaultive insult firmly
grounded in the history of slavery and
the degradation and dehumanization of
black people."

10 So, members of the jury, if you accept Dean
Nelson's opinion of the special meanings that
calling Professor St. Lewis a house Negro would
have, then Tab B sets out three of the passages
in issue that have the meanings that you see
15 there. So, the first thing sting is, "Did
Professor Joanne St. Lewis acts as Allan Rock's
house Negro?" Paragraph four, is the second
sting that would have special meaning and of
course, paragraph 8 in the second article of May
20 18, 2011 and the meanings are a person who is a
race trader, a person who is a piraya in the
black community; a person who's, by their
actions, is considered to be separated from the
black community and to have forfeited their
25 social identity with the black community and the
person who has severed their bonds with the black
community and their racial and cultural heritage.

30 So, those are the meanings. My last point,
damages. The first, some law. Again, remember
the law doesn't come from me, it comes from
Justice Charbonneau. But the - you need to know

what general damages, aggravated damages and punitive damages are.

5 The purpose of general damage award is to
compensate Professor St. Lewis for the loss of
reputation and for the injury to her feelings.
Compensate her for the loss of reputation and for
injury to her feelings. And another purpose is
10 to vindicate Professor St. Lewis so that her
reputation may be re-established. Vindicate her
so that her reputation may be re-established.
And you can consider several factors in assessing
general damages. Firstly, you look at the
position in standing of Professor St. Lewis in
15 the community and in the legal profession. So,
what was her position in standing in the
community and the legal profession as of February
11, 2011, when Exhibit 4 - 3 was published? You
can look at the seriousness of the defamatory
20 statements, the seriousness of them. You can
look at the extent of the publication. You can
consider the conduct of the defendant and you can
consider the absence of an apology and
retraction.

25 Now, you recall this morning, I dealt with
Professor St. Lewis' reputation in the community
and legal - in the legal profession. I'm not
gonna repeat that but remember, in publications
30 that question a lawyer's conduct, a lawyer's
integrity, a lawyer's ethics, a lawyer's honesty,
are seriously damaging; seriously damaging,

because a lawyer's reputation for integrity and trustworthiness is the cornerstone of the legal profession. It really is. So, keep that in mind.

The aggravated damages, these are also damages intended to compensate Professor St. Lewis for hurt feelings and further aggravation of the damages she suffered and that takes into account the conduct of the defendant, how he conducted his case, his defence and his state of mind. And you can award aggravated damages if you find that Professor - or that Denis Rancourt was motivated by actual malice. So, if you find that the defendant increased the injury to Professor St. Lewis by spreading further afield the damage to her reputation, spread further afield the damage to her reputation or if you find that he increased the mental distress and humiliation of Professor St. Lewis and you find he was malicious, you can award aggravated damages. You can consider his failure to apologize. You can consider his failure to retract any of the defamatory statements in determining the amount of aggravated damages. You can consider his republication or repetition of the defamatory statements and you can consider additional publications that he wrote since he was sued for libel. That's aggravated damages.

Punitive damages, those aren't for compensation purposes, those are punishment. If you find that

Mr. Rancourt acted maliciously and that his conduct was so oppressive and high-handed that it offends your sense of decency, members of the jury, you can punish him with punitive damages. If you feel - if you decide that his conduct was so malicious, oppressive, and high-handed that it offends your sense of decency, you can award punitive damages.

Now, I'm gonna review some of the evidence of the damage caused to Professor St. Lewis and submit to you that it warrants all three categories of awards of damages; general, which are presumed anyway if you find defamation and aggravated and punitive damages. So, you heard from Professor St. Lewis - or my - this morning, I gave you a summary of the evidence that she gave when she discovered, on her Google search, that the defendant had written an article that said she acted as Allan Rock's house Negro. I'm not gonna repeat that. But other people were present, shortly after she made that discovery on her Google search. One of them was Bruce Feldthusen, the dean. She went to him. And Dean Feldthusen testified that Professor St. Lewis told me she Googled herself and it was horrific. It was a very emotional meeting. She was extremely upset; she was angry; she was wounded; she was hurt; she was overwhelmed. And he recommended that they go see President Rock. And I asked Dean Feldthusen, when you went to that meeting, which was about a week after Professor St. Lewis discovered the

Google search item, what did he observe the impact of this was on Professor St. Lewis, at this meeting with President Rock? And he said it was the same as how she conveyed it to me when she first came to him and said she found the Google search result that somebody had called her or said she acted as Allan Rock's house Negro. And then I asked President Rock, what were his observations at this meeting of April 15, 2011 of the physical and emotional impact on Professor St. Lewis, what was he observing when she was discussing with him that Mr. Rancourt's article had called her a house Negro. And Allan Rock's testimony was deep distress, emotionally devastated, clearly crushed. A person very much in pain. She was almost disoriented by a stunning racist attack. Her reputation as an independent thinker was called into question. She was a person for hire. It was so against the grain, this was emotionally painful to her. And you'll recall that I asked Professor or President Rock why he agreed to support Professor St. Lewis in this legal action and he said, "There's a moral obligation to stand by her. She was doing work for the University of Ottawa and that work gave rise to this attack. She was deeply hurt by what happened..." and he said sometimes costs can be a barrier to seeking regress in the courts and so I instructed my lawyer, David Scott, to write a letter to Mr. Rancourt, which you'll see at Tab 7 of the compendium, which is a letter of October 25, 2011, where Mr. Scott, on behalf of the

University of Ottawa, wrote to Mr. Rancourt,
"Your defamatory remarks about Professor
St. Lewis were occasioned by work, which
she undertook at the request of the
university in the course of her duties
and responsibilities as an employee.
Her efforts were not personal but in the
interest of the university.

Furthermore, your outrageously racist
attack upon her takes this case out of
the ordinary, and in view of the
university alone, creates a moral
obligation to provide support for her in
defence of her reputation."

And John Currie also testified about the impact
that the articles three and four and Mr.
Rancourt's conduct had had on Professor St. Lewis
over the past three years of the litigation. He
also was one of the first people that Professor
St. Lewis went to see because she asked him to
actually read the - what was on the link that she
had found on her Google search. Professor
Currie's evidence was she came to my office, she
was highly agitated. She was stressed. Her
voice was trembling, which was very odd for her,
clearly distraught, on the verge of tears. She
said what she found. She had not read the blog.
Asked me to read it. My sense, she wished me to
vet it. Give her a filtered version. She was
highly emotional, upset. So unlike Professor St.

5 Lewis. It clearly had an impact. Like she came from a physical bullying. Somebody who faced an attack on her dignity and integrity. So, Professor Currie says he Googled Joanne St. Lewis' name. He read it. He knew of Mr. Rancourt because he sat on the senate and he still is a senate, University of Ottawa senator, sitting on the senate, and had been bombarded by emails directing the senate members to Mr. Rancourt's blog, U of O Watch. He read the article. Got in touch with Professor St. Lewis face-to-face. Described the content in general terms. House Negro was the low point. No further racial slurs. The post had clearly based this labelling on her evaluation of a student report on systemic racism. And he tried to give her some degree of comfort by indicating that there were certain comments that were posted about what Mr. Rancourt had written.

20 Now, Professor St. Lewis testified that the suggestion that she misrepresented that she was independent, impacted her professional ethics, as a teacher of social justice, who's gonna take her class? What kind of social justice professor denies racism exists? My entire career is built around social justice work. It affects my credibility in the classroom. It's standard practice for students to Google the name of one of their profs and the student who doesn't know her, is going to do a Google search and they're gonna find, as of today, the number two item is,

"Did Professor Joanne St. Lewis Act as President Rock's House Negro?" So, this has made her teaching a lot less enjoyable. Now, because she doesn't know what the students believe in what Mr. Rancourt published. I've asked what impact these articles had in her integrity as a lawyer. The answer or the testimony of Professor St. Lewis is it's difficult to reconcile that I sat for eight years on an ethics - on ethics of lawyers and I'm loose on my ethics. I'm not honest. I would not advance interest of those who are weaker. I don't protect the vulnerable. It affects my integrity as a lawyer and my professional ethics. Why would someone hire me on a race case if I deny racism? She said she chaired the Equity and Aboriginal Committee of the Law Society of Upper Canada. It was like she's profoundly hypocritical. Others have a standard but it doesn't apply to me? She said it's damaging and reckless, what he wrote. You'll recall that I asked Professor St. Lewis if she Googled her search - Googled her name since April 8, 2011 when she discovered this item and she said initially, she was obsessed about it, thinking that it's gonna disappear, it's gonna go away. But it never did. Her public personality is swallowed up, was her testimony. Her public personality is swallowed up with Mr. Rancourt's Wiki page, with Mr. Hickey's forum for discussion about the house Negro article and gave a number of other examples. Her testimony was, I can't control my own public personality. I never

5 denied racism. That word house Negro makes me who I'm not; a person who sells out for their own interest, for compliments or benefits from somebody else. The one problem I don't have is the ability to speak my own mind. He didn't know me. And finished off by saying for a student report, I've become a spineless ninny. It's not who I am.

10 Now, I'll just give you a backdrop of mode and extent of publication and then maybe, Your Honour, we'll take a - we'll take an afternoon break. I want to just go....

15 THE COURT: If it's a good time, we could do it now or...

MR. DEARDEN: No, I'd like to do this...

THE COURT: Okay.

MR. DEARDEN: ...little bit, Your Honour, if I could...

20 THE COURT: Go ahead.

MR. DEARDEN: ...please? So, we're dealing with online defamation or some call it cyber-libel. Okay? We're in cyber-space. It doesn't have geographic boundaries. Okay? We all know the Internet is like one of the most powerful tools of communication ever invented but it is dangerous. It's a medium of virtually limited - limitless international defamation. It has tremendous power to harm reputation and once a publication, an online publication goes into the cyber-space, you've got a worldwide audience to anybody that has access to an Internet

25

30

5 connection. And we know from the evidence, that Mr. Rancourt's articles have been accessed in Europe, that's the U.K., that's English Works, Asia. This is the note from Thailand and the United States. Mr. Lendman and Jeff Schmidt and the Brian Leiter reports, all from the U.S.

10 Thailand, you'll find at Tab 43 of your compendium. It's an email sent to Mr. Rancourt by somebody called Kevin McLeod. Thoughts from Thailand about lawsuit against your blog. He says he thinks that Allan Rock and his goons are pouncing on this because it looks bad for a white man to call a black woman a house Negro. And he suggested Mr. Rancourt should apologize for using the term house Negro since Joanne St. Lewis is supposed to be offended by it.

15 "You should add that you were offended by Joanne St. Lewis in the administration dismissing the report of systemic racism on campus and urge Joanne St. Lewis to apologize to students. I strongly advise you not to take a stand on the house Negro issue. I think many black people would be 20 offended by the use of this term, even though it's used in response to St. Lewis allowing herself to be reduced to a mere prop, to deny a systemic racist on campus is ongoing. Rock and the other Lanks will use this house Negro 25 issue to publicly lynch you."

5 Of course, we know this is false. Okay?
Professor St. Lewis didn't allow herself to be
reduced as a mere prop to deny systemic racism.
This guy couldn't have read her - what she wrote
in her report. And Mr. Rancourt responds, "Thank
you for expressing this. I'm considering how to
implement your advice."

10 The next tab is from the United States, this is
the Brian Leiter Law School reports that report
on Rancourt called St. Lewis, Allan Rock's house
Negro in his blog, U of O Watch. Okay? And this
is a publication that is read by legal academics
in the U.S. So, they're reading that this about
15 Professor Rancourt [sic] - Professor St. Lewis
rather. Two profs, one from Chicago, one from
Drexel University in the United States. And then
we'll get to this after the break, but Stephen
Lendman lives in the United States and Jeff
20 Schmidt lives in the United States and I'm gonna
draw your attention to what they've written, as
friends of Mr. Rancourt, about Professor St.
Lewis.

25 So, if we want to take a break, Your Honour, this
would be a good time.

THE COURT: All right. We'll take 15 minutes.

...JURY RETIRES (3:29 p.m.)

30 R E C E S S (3:29 p.m.)

U P O N R E S U M I N G: (3:49 p.m.)

THE COURT: Bring in the jury.

CLERK REGISTRAR: All rise.

...JURY ENTERS (3:50 p.m.)

CLERK REGISTRAR: All members of the jury are
present, Your Honour.

THE COURT: Thank you. Let's proceed.

MR. DEARDEN: Thank you, Your Honour. Steve
Lendman, Steve Lendman. A friend of Mr.
Rancourt, lives in the United States. In Tab 22
of your compendium, you'll recall - well, you
don't need to look this up, members of the jury,
remember Mr. Rancourt sent out an email blast to,
amongst others, Mr. Lendman with the Statement of
Claim. And low and behold, the next day, Mr.
Lendman, at Tab 31, emails Professor St. Lewis.
He emails her, June 24th, the day after he got the
Statement of Claim.

"In response to your suit, how noble of
you to sue Denis. I imagine your motive
is to suppress truth. He and I focussed
on it without compromise. We discuss it
together on my radio program. I write
about it daily. I'm committed to spread
it as widely as possible. So is Denis.
What's your commitment? Denis is one of
the best. Shame on you for subverting
law and justice, especially because you
teach civil liberties and social justice
law."

And he - Tab 32, Mr. Lendman publishes the Denis
Rancourt struggle for justice and I didn't

5 include the whole article there, 'cause really
what I wanted to draw your attention to, members
of the jury, is he's publishing this on
www.localterror.com. You see that at the bottom
of the page. Localterror.com with wonderful
things like the Synagogue of Satan and the
picture of Hitler and Professor St. Lewis
testified about this. She said that Mr. Lendman
is a strong supporter of Mr. Rancourt in the
10 context of this case and mentioned the struggle
for justice publication appearing on this
website, which was most striking to her. Looked
at the symbols,

15 "Who's reading about me? Hitler,
Synagogue of Satan? I was really
concerned. My student report had
nothing to do with Mr. Rancourt.
Nothing. It made me somewhat paranoid,
worried. In all this time, Mr.
20 Rancourt's never published a
clarification that I had nothing to do
with his firing."

25 Then we have Jeff Schmidt. He's known Mr.
Rancourt for over 10 years and he lives in
Washington, D.C. And Tab 34, you have Mr.
Rancourt publishing a link to author Jeff
Schmidt, campaigns for just treatment of
Professor Joanne St. Lewis. And I wrote him a
30 Notice of Libel and takedown that you see at Tab
33, which I would ask you to look at, please. I
say, amongst other things, "Schmidt's letter is

5 rife with defamatory statements about Professor
St. Lewis. In addition to taking this blog down,
I'm demanding you apologize to Professor St.
Lewis immediately. Failure to do so will be
considered further evidence of your malice
towards Professor St. Lewis and an aggravation of
the damage you've caused to her reputation." And
he didn't take it down. What he did is he
publishes what you see at Tab 36, that author
10 Jeff Schmidt apologises to Professor Joanne St.
Lewis, U of O Student Senator reports, which is
Mr. Hickey. And Professor St. Lewis testified
this is a ruse. It was meant to humiliate me,
'cause we know Jeff Schmidt's publications were
not a campaign for just treatment of Professor
15 St. Lewis and sure weren't an apology.

Professor St. Lewis testified that Jeff Schmidt
was trying to harm me. And Mr. Rancourt knew he
was aggravating Professor St. Lewis' damages by
publishing Jeff Schmidt's defamation but he's
never taken those U of O Watch articles down.
And earlier this morning, I mentioned to you that
Tab 46 contained a - oh, Tab 45 rather, contained
25 a number of other Notices of Libel and takedown
notice that I served on Mr. Rancourt. There's
one that's dated September 16, 2011 and it's the
third one in, third green sheets in, September
16, 2011 and I'm telling Mr. Rancourt, "The
30 Joseph Hickey publication defames Professor St.
Lewis and falsely states that due to the serious
evidence of corruption in fraud surrounding

5 plaintiff St. Lewis' response to the Student
Appeal Centre's 2008 report of systemic racism at
the University of Ottawa, I'm notifying you to
take down your false and defamatory publication."
And he doesn't. It's a publication where
Professor St. Lewis, as a lawyer and a law prof,
is accused of writing a corrupt and fraudulent
evaluation report, the one that's at Tab 1. It's
10 unimaginable that anyone could write that, but
they did and Professor St. Lewis' testimony was
it's a lie. He published a lie that a lawyer and
a law prof was guilty of fraud and corruption.
And her other testimony in particular on this
takedown notice of September 16, 2011,

15 "I wasn't worthy of what I accomplished.
That's how I felt. I thought I'm never
getting out of this. He's destroying my
public personality. He's smearing me."

20 It felt like a noose tightening around her, these
number of takedown notices when Professor St.
Lewis was dealing with that in testimony. It
felt like a noose tightening around her, blog
after blog post.

25 "I didn't know him. I wrote a report
that was not about him and it was like
pouring gas on a fire. It was an
attempt to intimidate me. It was a
public shaming. What they were doing
30 was bullying behaviour. They attacked
my dignity as a black woman, lawyer and
law professor. It was stunning.

Profoundly false. I had to take it.
Suck it up."

5 He - I'm going to bully you until you quit, was
how she felt Mr. Rancourt was treating her. I'm
gonna bully you until you quit. He was trying to
shame me to quit. What he did was wrong. He
vilified one of the only black profs on campus.
10 And then she also gave evidence, as you recall,
that he goes on a radio program in Montreal where
she was born, suggests - she's bilingual and
suggested that she was opposed to bilingualism
and he said other things that were defamatory on
that program. He's never apologized, members of
15 the jury. He's never retracted. Take down
notice, notice of libel after notice of libel,
not Mr. Rancourt. No, he never surrenders. But
all of that you can use to decide whether he was
malicious, whether he aggravated Professor St.
20 Lewis' damages and whether you feel that punitive
damages are warranted.

25 Now, the comments that are posted on U of O Watch
and Activist Teacher websites, recall in the
read-ins, he's the editor and manager. Mr.
Rancourt controls what's published on those
blogs. He can control what content can be taken
down or removed. He screens comments before -
that come in and he can delete comments if he
30 wants to. He approves them. They don't go up
unless he effects them to be published on his
websites. And we went through those, a number of

those during the examination in-Chief. They're defamatory. They're cruel. In particular, you know, English Works, over in the U.K. with the Bah, Bah, Black Sheep. What I've done, 'cause I wanna get you home, is in Tab 50, this is the June 23, 2011 U of O Watch that has the 14 comments and so what I've done is I've numbered the comments. So, if you look at page 2, I've numbered the comments. And really, when you go up to number 8, which you'll find on page - I think it's 7 of 17, the page numbers got cut off there. Okay, this is one of the first English Works piece of work, where Professor St. Lewis is a token. She's a patsy. Professor St. Lewis testified that this person thinks I'm connected with Rancourt's grievance and I'm a patsy who hides under the master's table. The 10th - number 10 one, English Works now gets a little more mean, indicating that Professor St. Lewis cowered under the master's table. We should be gentle when she crawls out from under. On the next page, I could equally use other terms to convey the same thing, like patsy token house Nigger. So bloody what if Professor Rancourt used the expression, house Nigger. And that goes on and on. Is she really a professor of law or what? The law of the jungle? So, Professor St. Lewis' testimony to that was it was so mean and vicious. Mean and vicious, to post these comments and he controls his website. Mr. Rancourt controls his website. It's there to humiliate me. And then number 12 is the Bah, Bah, Black sheep by English

5 Works. You know, get a better position. Your
daddy talked about was not meant to turn you into
a chicken or a turncoat. It's stunning, members
of the jury, that this was allowed to be posted
on this website in the midst of being sued for
libel. And English Works didn't stop there.
10 Number 14 comment, second last page, the last
paragraph, for Ms. St. Lewis to take this course
of action exposes her for the opportunist -
opportunistic fraud that she is. Professor St.
Lewis testified that that's malicious, it's
vicious, it's reckless to publish or actually,
maybe Professor St. Lewis didn't say that in
15 testimony, that's my argument to you, is that
that is malicious, vicious and reckless. Just to
allow a comment to be posted that Professor St.
Lewis is an opportunist - opportunistic fraud.

20 And then Tab 52, you have at Tab 51 another
English Works, Bah, Bah, Black sheep on Activist
Teacher blog site at Tab 52, English Works is at
it again. Mr. Rancourt posts a comment again and
that is the very last page at Tab 52. "What a
phenomenon you are, Professor Rancourt, a true
25 educator, continuing in the brave tradition of
Socrates. What a example to all the cowardly
service drivell intellectuals only concerned with
feathering your nest." That's Professor St.
Lewis. And I wrote at Tab 53, the next tab, I
30 wrote Mr. Rancourt another Notice of Libel and
takedown and like all the other ones, he ignored
it. It's still there today.

5 In terms of social media, you know about the tweets, you know about the Facebook messages. Professor St. Lewis' testimony on that was that it draws attention to media articles that he's put on U of O Watch or Activist Teacher. He's linking to others. He's layering on his communications in so many multiple ways. He was drawing attention in all of those spaces, all of those platforms have different communities. It's not the same people. Like she said, it just keeps going. And the crazy case of defamation, Professor St. Lewis said, you know, to write out to the world at large, it's a crazy case. It was stunning. It's like I lost my balance. 10 Everything in this case has been inverted. He's the victim. I'm not a person. Like I have no reputation to defend. 15

20 Students, impact on students, course enrolment. Professor St. Lewis testified that I'm known for teaching in several areas, one of which is social justice, civil liberties. On average, she'd have 20 students. She taught - or after Exhibit 3 was published, it dropped to 11 students. She taught professional responsibility and diversity and had 25 seven students. She's a benchler of the Law Society of Upper Canada for eight years; sits on disciplinary cases. That's professional responsibility. So, you think the class would be 30 overloaded with somebody that had first hand experience with professional responsibility issues and had the power to disbar lawyers.

5 Seven students. The lowest I ever had. Who
would take a course from an unethical prof?
There has been an impact and the students are
voting with their feet, was the testimony of
Professor St. Lewis.

10 We had, as a witness, Saron Gebresallassi, who
was a law student at the time this publication
occurred and she spoke about the black square
campaign that she organized. This is where
students and faculty would wear black squares to
demonstrate symbolic support for Professor St.
Lewis but she testified there were two students
that didn't take the black squares. They didn't
15 take them. They said they weren't sure where
they stood on the issue. So, there's an impact,
ladies and gentlemen of the jury. There's an
impact. And then I also - Saron had testified
that there was an online buzz created because
20 when Tom Spears wrote his Ottawa Citizen article,
that got forwarded to Saron and the students were
all exchanging and of course, that article
repeated the libel. It said - and then it asked
that created a lot of questions and email to
25 Professor St. Lewis from Saron, about that
particular Ottawa Citizen article. You have the
evidence of Professor St. Lewis' mother, Sileen,
a registered nurse. She worked at the Pembroke
Civic Hospital for 35 years and they lived in
30 Pembroke for 35 years and she almost worked there
for 35 years. I asked her about her relationship
with her daughter. It's very close, a loving

relationship, but she testified that Joanne isn't spending as much time with her as previous to the publication of Exhibit 3; that her daughter is tired, irritable, not motivated to go out much. I asked what changes have you observed on your daughter the past three years? She gave the example previously, she'd be on the floor with grandchildren. And now she doesn't have the same enthusiasm to play with her grandkids. She's not going to the gym. She's not eating properly. She's not taking care of herself. And her mother knows she isn't sleeping properly because she's getting responses to that Word and Friends game at one, two or three o'clock in the morning, so mommy knows best and her daughter should've been sleeping and she wasn't. And I asked Mrs. St. Lewis, what worries have you had about your daughter? And she testified she's been short-tempered. She has less time to spend with me. She gave the example where she asked Joanne to help her out with something and Joanne said, "Well, you have two other children." And she said, this is just not like her. She's taken care of me always. She loved being with her family and with people and she's sitting by herself. She's not interacting with us, the family, is what Mrs. St. Lewis testified to. And then Professor St. Lewis' brother-in-law, Denis Laberge, he testified. He's known her since 1995, around the time she [sic] married Joanne's sister and he had concerns about - no concerns about Professor St. Lewis' physical safety prior

5 to the publication of Exhibit Number 3, but now
he does and he recounted that Professor St. Lewis
told him about the story about this individual
that came into her office and started talking
about Rancourt. She didn't know this person.
The conversation was unsettling. So, now he
looks out for her well-being. When he drops her
off at the house, he makes sure she's in the
house before he leaves. And it's a big concern
10 to him, for his sister-in-law's safety and that
interaction that she had with this stranger that
wouldn't leave Professor St. Lewis' office. He
testified that in his observations of his sister-
in-law, her behaviour has been up and down. Her
mood at times is up and down. She's very steady
and a strong individual but this has all just
taken away quality time I had with her and that
she had with my - with her sister and with his
children because of what's happened. The same as
20 what Joanne's mother was saying. And he gave the
metaphorical example in terms of, you know,
what's the impact that these house Negro articles
had on Professor St. Lewis? It was like walking
down the street, getting blindsided by a truck,
25 except the truck keeps on running back and forth
over you. And at times, according to Denis
Laberge, Professor St. Lewis looked depressed.

30 And then you had Professor St. Lewis' friend,
Jacqueline Beckles, who works at the Department
of Justice and she told you she first met
Professor St. Lewis as a law prof at U of O. She

had an open-door policy. She continued the mentioned relationship after she graduated from law school and was - became a lawyer. She described Professor St. Lewis as an indomitable woman, an auntie to us. She was an auntie to us. We sought to be in her presence, according to Jacqueline Beckles. But she said, you know, Professor St. Lewis had been our faculty advisor on the Black Law Student Association of Canada for 17 years but she quit. After this publication, she resigned as faculty advisor last year. How has her relationship with Professor St. Lewis as a friend been affected? She described how she thought that Professor St. Lewis was one of the busiest persons she knew. When the litigation started, Joanne was involved in a number of activities and involved in art and music and painting, sculpting and what she's observed is that Joanne is withdrawing. She's retreating into herself. She used to be accessible to everybody. She had to relocate her office. Now, she's in a secure area. She's not - it's not an open-door policy any more. She - you gotta have an appointment to meet her. She screens her telephone calls so Jacqueline can't get through on a telephone call. Somebody takes messages and Professor St. Lewis has to phone back. And then lastly, Jacqueline Beckles testified the stress would've felled any number of people. Mr. Rancourt's constant attacks, his champerty motion, his other motions. She testified that Professor St. Lewis has been sick.

She took a leave of absence and she has withdrawn from things she loves like painting, singing. She's not as involved in the Ottawa community as much as she used to be. That's the impact.

Professor Currie testified. You recall he testified that Joanne was - he's known since 1991. They're close friends professionally and his observations, as you recall I said this morning, there was no more improbable person to be labelled what he saw in Exhibit 3 and 4 than Professor St. Lewis. So, what was his observations of the physical and emotional impact Mr. Rancourt's articles have had on Professor St. Lewis the past three years? He described, remember his first meeting and the state that she was in and he had never seen her in that state before but he has seen her in that state several times the past three years. Near emotional exhaustion, distress, she gets periods of resolve and strength and then she has to take a medical leave, which he encouraged her to do because of the toll of the ongoing and repeated attacks by Mr. Rancourt. On more than one occasion, she expressed frustration that she was robbed of her mentorship role of students. She just can't be able to do her mentoring and her teaching with the usual dedication and strength. The energies devoted to what they're commonly devoted to have been compromised by addressing the ongoing Rancourt attacks, was what Professor Currie testified to. The Dean Feldthusen, he testified,

as you recall, about the office relocation. Third floor was where Joanne was. It's a vulnerable place in the building. It was a catwalk. The public had access 24 hours a day. Very exposed and so Joanne recounted this incident with the stranger coming in, connected to Rancourt and it scared her and he took that seriously and he moved her to the office next to his on the first floor where the doors automatically lock at 5:00 p.m. And he also went to Professor St. Lewis' night class to speak to the students there. It was a 7:00 to 10:00 p.m. class and to tell them, if they noticed anything unusual, to tell a TA and according to Dean Feldthusen, that concern was legitimate. He also called Protective Services to ask them to keep out a closer watch on that classroom from 7 to 10 when Professor St. Lewis was teaching. The dean called Protective Services to tell them that. And then he - Dean Feldthusen also testified about the reduced workload that he gave Professor St. Lewis in the fall of 2012 and he took over her torts class in February of 2013. That term, so it'd be the winter term of 2013, it was evident she was having a hard time coping with the stress and it was evident she was under a great deal of stress, is what Dean Feldthusen testified to. And then he also testified that Professor St. Lewis had to go on medical leave from March 2013 to July 2013. Now, Professor St. Lewis testified about the impact on her. We start with Black History Month events, which

meant a great to her. It's one of the most central things I do in my career, four or five presentation. I spoke about - across the country, spoken to government departments, received awards from the Black History Month committee. And Professor St. Lewis said Mr. Rancourt lied about me. He tainted the meaning of the month for me, in that February 11, 2011 Exhibit Number 3. It's no longer celebratory. That was her testimony. The February 11th article created two types of people; those worthy of being honoured versus the house Negro. So, she's made out to be not a social justice person. I'm the opposite. That was painful and insulting to Professor St. Lewis. Black History Month is an initiative of the black community. And as I told you, Mr. Rancourt has no knowledge of Black History Month. He didn't teach a course, he didn't give a presentation at a Black History Month event. And the photograph he choose - he chose was a Law Society of Upper Canada photo at a presentation that Professor St. Lewis was doing in Black History Month. Coincidence? Well, it's not the same photo that he had used in a previous blog that he did back in December of 2008. He found a different photo, that one, that you're looking at the screen. I asked Professor St. Lewis to describe her feelings and the impact that paragraphs 1 to 4 of Exhibit Number 3 had on her in the past three years. It's the most profound insult in my professional career. To suggest that I can't analyze whether systemic

racism is prevalent, a suggestion I would deny it. I leapt over the inadequacies of the Student Appeal Centre report and I made my recommendation number one and U of O followed up on the recommendation because they retained Professor St. Lewis to do - or they asked Professor St. Lewis to do the second mandate, which was to analyze the academic fraud process at the university. Professor St. Lewis testified that was an unwarranted attack. The language calling me a house Negro has no place between professional colleagues. And she pointed out that in sting number 8, the second article that he wrote, house Negro was there three times. This is something painful to her. It insulted my integrity. It called into question my competency to do the report. What will my students be thinking of me? I wanna be seen as a professor in my classroom. And they robbed me of that. I was going to have credibility problems. Very painful. She spoke of the physical safety concern and that was the incident that I just told you about, that this person barging into her office. Was agitated, upset about Denis Rancourt. Wouldn't leave and that's when she went to the dean to get her office moved and they did move her.

I asked Professor St. Lewis what effect had the defendant's publications and conduct had on your work environment and your ability to fulfill your duties at the law school? She testified that

she's reluctant now to go to orientation. She doesn't know what students are thinking. She had asked for reduced workload, as you heard Dean Feldthusen testify about. In 2013, it was a really hard year, it was never stopping, never had a clear month of piece. It was unrelenting. I went on medical leave in 2013. I couldn't finish teaching that year. I pushed myself to keep teaching, she testified but I needed help and I sought counselling from Charlynn MacCharles and she was worried about how helpless she felt; how much like a tsunami things felt and that was her timeline. My whole reputation had been under assault for the past three years and non-founded on what I said. And then you have Charlynn MacCharles who was the counsellor testifying that there were 22 appointments in March 2000 - or in the year 2013. They started when Professor St. Lewis took her medical leave in March of 2013. Her observations, Professor St. Lewis was tired, stressed, emotionally drained, looked overwhelmed and visibly upset. There was clearly a sleep impact. She could hear it in the tone of voice. She was anxious, agitated. She mentioned that incident where Professor St. Lewis threw up with the lawyer that had linked Professor St. Lewis to Rancourt being fired. She was upset physically. There was an impact on the quality of her work life and that Mr. Rancourt was taking away the joy of teaching. So, that's some of the evidence of the damages that Professor St. Lewis has suffered since

February 11, 2011.

5 Your questions to the jury, you'll find for
damages at part D. So, part D, under the heading
"Damages", if you found any of the words
complained of to be in fact defamatory and what
amount do you assess the general damages of the
plaintiff? Should the plaintiff be awarded
aggravated damages? Yes or no. If the answer is
10 yes, what amount? Should the plaintiff be
awarded punitive damages? Yes or no. If the
answer is yes, you write in an amount.

15 And in conclusion, members of the jury, we all
cherish our good reputation, as that goes to our
worthiness and dignity as individuals, doesn't
it? As human beings. And that's why we have
libel laws or defamation laws, to protect
reputations because false allegations can quickly
20 destroy a good reputation that's taken years to
build and a reputation that's tarnished by libel,
it sometimes doesn't regain its former lustre.
Our whole system of justice depends upon a
lawyer's reputation for integrity and
25 trustworthiness and anything that leads to a
tarnishing of that for a lawyer's professional
reputation, can be disastrous. Professional St.
Lewis has no way of knowing who believes the
defamatory statements published by Mr. Rancourt.
30 For the rest of her life, she's gonna wonder, is
there another English Works gonna come out of the
works, and publish the kind of vicious things

that you saw in those comments or is there gonna be another lawyer, like Ed Corrigan, who's gonna misinterpret or think that Mr. Rancourt has written something that's completely false, that she was involved somehow in his firing or whatever. What Jeff Schmidt's gonna do, what Lendman's gonna do. Is there gonna be another of those types? And, you know, in 1935, there was a House of Lords line that said, the House of Lords over in England, "It's impossible to track the scandal to know what quarters the poison may reach." That was in 1935, before anyone imagined the Internet. That statement is so apt in the 21st Century age of the Internet, where did the poison reach? Okay? Because you can re-tweet a Tweet, you can forward emails, you can forward Facebook messages, you can forward these articles that are online, attach them as links. You don't know where it's cached. You can never track that scandal, to know what quarter the poison will reach for an online publication. But Professor St. Lewis has been tattooed as Canada's house Negro. You can't wash it off. She's Canada's house Negro. The fact that Mr. Rancourt has branded her as a house Negro that has to be outed during Black History Month. And those statements can be accessed by anyone in the world that has an Internet connection.

So, members of the jury, if you decide that Professor St. Lewis has been defamed, it's you, as members of the community, it's you who are

5 best abled to assess the damages that she
suffered and your best - you are in the best
position to give her an award that will
demonstrate to the community, the vindication of
Professor St. Lewis' reputation from the
defamatory statements that have been published by
Mr. Rancourt and if you find that he acted
maliciously, you can award aggravated damages,
that compensate her for the cyber-bullying that
10 she's been putting up with for the last three
years and lastly, if Mr. Rancourt acted
maliciously and you decide that his conduct has
been so oppressive and high-handed that it
offends your sense of duties, your sense of
decency, punish him, award punitive damages to
15 show your outrage in his conduct in what he's
written about Professor St. Lewis. He made her
workplace toxic and he made her life a living
hell for the past three years but your verdict
can be an anecdote to that poison and your
20 verdict can be a start of restoring her
reputation back to where it was in February 11,
2011, when he published Exhibit Number 3, which
you see on that screen.

25 I thank you very much for your attention today.
I'm sorry I was longer than I wanted to be but
thank you very much and now, it will be up to
Justice Charbonneau to charge you from here.
30 THE COURT: All right, thank you. All right.
So, tomorrow we will start with the second to
last step in this trial, that is I will be

5 providing to you what are the principles of law.
What is the law that applies in this case and to
which you - once you have found what the facts
are by looking at the evidence, you will decide
what the facts are and then you will apply the
principles of law I give you to determine what
are the consequences of those facts in relation
to the various issues which Mr. Rearden [sic] has
mentioned to you and to help you do that,
10 obviously we will be referring and you will be
provided with a list of questions and you'll be
able, when you refer to the evidence, and weigh
the evidence, consider all of the evidence,
you'll be able to answer those questions. I -
and after that, we'll get to the last step and
that will be that you will retire and you will
decide. I - may I remind you, I mentioned that
to you at the opening that you will need to
choose a foreperson who will be able to help you
in your deliberations, conduct deliberations,
20 allow everybody to have his and her say and make
sure everything proceeds in an orderly manner.
And so, think about this and that will be your
first task is to decide which of you are now -
you know each other a little bit from having had
25 time while you were waiting and we were rendering
other things to discuss together and you'll see
which person you think is the best person to be
the foreperson. I do not expect I'll be longer
than - much longer than about two hours. I will
30 be briefly touching at the evidence but
obviously, you've heard Mr. Dearden, who's

5 reviewed the evidence in relatively great detail,
so I will though point to some of the evidence,
which I think you must look at in order to direct
you to the evidence, which could possibly be the
evidence, which would apply to the various issues
but I will not be referring in any extensive
matter whatsoever to the evidence. All right?
So, we'll see you tomorrow morning at ten
o'clock.

10 ...JURY RETIRES (4:33 p.m.)

MR. DEARDEN: Your Honour, just before you step
down. Did you receive my suggested....

THE COURT: Yeah, I'm...

MR. DEARDEN: Okay.

15 THE COURT: ...I'm taking into account all of
your suggestion and we will - you'll find out
what that consideration is. I've - I appreciate
that. I obviously - and I have received and I've
reviewed them and I considered them.

20 MR. DEARDEN: Thank you, Your Honour.

CLERK REGISTRAR: Court is adjourned until
tomorrow at ten.

25 ...PROCEEDINGS ADJOURNED (4:35 p.m.)

FORM 2
Certificate of Transcript
Evidence Act, Subsection 5(2)

5
I, Francine Bourque, certify that this document is a true and
accurate transcription of the recording of Joanne St Lewis v.
Denis Rancourt in the Superior Court of Justice held at,
10 OTTAWA, Ontario, taken from Recording No. 0411-CR36-20140602-
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October 20, 2014

15

(Date)


(Signature of authorized person)
Videoplus Transcription Services ACT number 554-265-0147

SUPERIOR COURT OF JUSTICE

5 B E T W E E N :

JOANNE ST. LEWIS

Plaintiff

10 - and -

DENIS RANCOURT

Defendant

15 P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE JUSTICE M. CHARBONNEAU
on June 3, 2014, at OTTAWA, Ontario

20

25

APPEARANCES:

30

R. Dearden

Counsel for the Plaintiff

D. Rancourt

In Person

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SUPERIOR COURT OF JUSTICE

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E X H I B I T S

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Legend

[sic] - Indicates preceding word has been reproduced
verbatim and is not a transcription error.
(ph) - Indicates preceding word has been spelled
phonetically.

Transcript Ordered:	June 28, 2014
Transcript Completed:	November 1, 2014
Ordering Party Notified:	November 2, 2014

TUESDAY JUNE 3, 2014

(10:04 a.m.)

5 THE COURT: All right. So, first of all, before
we call the jury, I've received a number - two
correspondance this morning, two email, which we
will need to file. First of all, there's an
email that was sent to me by Mr. Schmidt, an
individual we've heard about in the evidence and
basically, it's a letter. I won't read it. It's
10 a letter indicating that I should throw the case
out of court and included is a long letter, a
copy of a long letter addressed to Mr. Rock,
Allan Rock, president of the university,
basically chastising Mr. Rock for mistreating
Professor Lewis somehow.

15 MR. DEARDEN: But on the record, Your Honour,
that is in the evidence, that Schmidt so called,
you know, coming to the rescue of Professor St.
Lewis, but it's a sarcastic and repeat of the
libel.

20 THE COURT: Well, is it the same one?

MR. DEARDEN: Yeah.

25 THE COURT: Oh, so it's a - it's not a recent
letter? Okay. So, anyway, it's recent to me.
It's copied to me is a - it's recent but it's not
- maybe not the same one.

MR. DEARDEN: Yeah, well, I didn't do a word by
word comparison of what he attached to Allan Rock
as an email, Your Honour, but it was...

30 THE COURT: I thought it was a little different,
but any event, that's not the point, that's
not...

MR. DEARDEN: It's an email...

THE COURT: ...neither there or there, so we'll file this as R...

CLERK REGISTRAR: R22.

EXHIBIT NUMBER R22: Letter from Mr. Schmidt - produced and marked.

THE COURT: Okay. And then I received a letter from Mr. Rancourt, which I will read for the record and which will be the next R exhibit. And he states he has a copy to Mr. Dearden and to the Court - the - Ms. Johannson, the coordinator.

"Dear Justice Charbonneau, as the court knows, although I have chosen to not attend trial, I have not abandoned my defence. In addition, I intend to be present in every aspect of the litigation as soon as the jury retires to make its verdict. As such, I respectfully hereby expressly ask to retain every right of a party in the litigation." I don't know exactly what that means, but he says, "One", indicating he's asked Mr. Dearden for copies of documents that hasn't been provided, so he asked that I order the plaintiff to provide them, more specifically, submissions and communication with the court. He wants to be notified of any post jury verdict procedures and that I be consulted regarding scheduling. "I request to have a copy of all document correspondence exchanged between the plaintiff and the court during the trial, including draft questions for the jury and facta. And I request a copy of an endorsement that was made today at trial." I assume he's referring to

the decision I made on the - what questions would be put to the jury. Now, in relation to all of that, Mr. Dearden - Mr. Rancourt is obviously, I don't know, he - that's not the proper way to do this. If you want to request things, you can appear. He's obviously - a lot of this documentation is now public in so far and he can get copies of them. That includes my endorsement, copies of the book, if he wants to get some. If it is to - as for post jury verdicts, I assumed he's talking about the other claims and the statement claim, more specifically injunctions and things of that nature. He's obviously being notified everyday what's going on in court. So, if we fix a time for such, he will - the people who are here and who report everything to him can do so. So, this will be...

MR. DEARDEN: So, Your Honour, may I just to go on record? I take major exception to the first line of Mr. Rancourt's email to you of June 2nd sent last night at 6:22 p.m. He says, "As the court knows, although I have chosen to not attend trial, I have not abandoned my defence." I completely disagree with that. He not only abandoned this trial, he abandoned his defence and since he left this courtroom around ten, 10:00 a.m. on May 16th, he's been acting nothing short of contemptuous towards this Court and my client, Professor St. Lewis. So, he has abandoned his defence. There's no doubt about it and like all members of the public, if he wants a copy of any exhibit that's filed after the jury

has rendered his verdict, he can ask for and pay for a copy, a photocopy of the exhibits and your ruling on capable of being defamatory. And this trial, Your Honour, it - we scheduled it to end this week. It's going to end this week and he knows that and he has chosen voluntarily to not appear. He's abandoned his defence. He lives with that consequence. On the other matter, Your Honour, on going back to Mr. Schmidt's email that he sent to us last night at 9:33 p.m., Schmidt is indeed in the evidence but you'll recall that what Mr. Rancourt did is he put on his U of O Watch, you know, sort of like a breaking development where Jeff Schmidt apologizes and it's nothing short of - it's not an apology at all but that was Mr. Hickey, who's sitting over there in the corner, one of the partisan supporters of Mr. Rancourt. It was him that reproduced that email and it's the - that link that Mr. Rancourt provided to Schmidt's communications but I did a Google search, Your Honour, this morning on Joseph Hickey and Carolyn Wang and I've discovered information to suggest that they may be spouses. It's our understanding that Carolyn Wang is Mr. Rancourt's daughter and I just discovered that now. So, if it's true that there is a personal relationship between Mr. Hickey and Mr. Rancourt's daughter, which could be that they're married, they're common law spouses or just live together, if there's that relationship with what Mr. Hickey has done throughout these three years in support of Mr.

Rancourt, I just find that stunning. Absolutely stunning. And he's done it in this case through the auspices of this Ontario Civil Liberties Association. Your Honour, that organization is not incorporated. When we made submissions to the Supreme Court of Canada where we got solicitor client cost on the last leave application, we went to the address that Mr. Hickey gave for the OCLA and it's not - it's like a web design, you know, an Internet, some kind of Internet company or design company for websites. It is a fly by night organization, which we see is essentially Ms. Wang, who's the treasurer, Mr. Hickey, who's the executive director and Mr. Rancourt who's the working group coordinator for self-reps and they're the only ones that write anything, essentially, 99 percent of what they write but they're using that as if it's like, you know, the Canadian Civil Liberties Association, which is incorproted [sic] - incorporated, has a charitable registration and is real. And that organization, of course, they have - their founding principles, Your Honour, they believe, that is the OCLA, that any speech goes. So, they agree with hate speech. They agree with child pornography. They agreed [sic] with genocide. They agree with slavery. They have it in their founding principles. It's stunning. But they've been running major interference in this litigation under the auspices of it's like a real Civil Liberties Association and, unfortunately, you can't put that in the evidence. A lot of

5 this stuff is it's trying to prejudice the jury,
I can't tell them about. Like, what Schmidt just
did, I can't tell them about. It's just - I've
never seen this in the 35 years I've practised
law and especially, you shouldn't be doing this
kind of thing in a libel action when you're a
defendant, but that's what's happening. I'm
putting it on the record, because it sure appears
10 that they're orchestrating whatever it is they're
orchestrating to take it to appeal or whatever
and I find the whole - I find it a circus. I
really find it a circus. Like we're - it's not a
cartoon that we're living here. This is real
life. It is Professor St. Lewis' personal and
professional reputation on the line and they
15 think they can get away with this and they
shouldn't. So, that's my remarks on the record,
Your Honour. And I'm sure we're gonna have more
R exhibits before this trial ends this week and
that's unfortunate.

20 THE COURT: Bring the jury. Here, you want to
give this to counsel? And this will be the
official copy of the charge for - which you will
mark as J1.

25 EXHIBIT NUMBER J1: Charge to jury - produced and
marked.

CLERK REGISTRAR: Okay, Your Honour.

30 THE COURT: Okay? And you will then just review
the six copies, once the jury's in, these six
binders will go the jury.

MR. DEARDEN: Mr. Registrar, R23 is the email
from Mr. Rancourt?

Charge to the jury - Charbonneau, J.

CLERK REGISTRAR: Correct, Mr. Dearden.

EXHIBIT NUMBER R23: Email from Mr. Rancourt -
produced and marked.

CLERK REGISTRAR: All rise.

...JURY ENTERS (10:16 a.m.)

CLERK REGISTRAR: All members of the jury are
present, Your Honour. You may be seated.

THE COURT: Good morning. The registrar will
hand out the copies of my charge and as I go over
it with you, you can read it and.... All right.

C H A R G E T O T H E J U R Y

CHARBONNEAU, J. (Orally):

So, members of the jury, as I told you at the
beginning of this trial, I propose at this time
to instruct you on the law and to show you how to
apply the law to the facts as you find them. So,
that you may be better able to follow my charge,
I will divide it into the following parts. Part
one, some general principles of law that apply to
all civil jury cases; part two, overview of the
case; part three, a review of the law of
defamation and the evidence relevant to the
questions you will have to answer; part four, the
questions and part five, final instructions.

Respective duties of judge and jury:

It is my duty to instruct you on the law that
applies to this case and you must follow the law
as I state it to you. You must discard any
notions or opinions of your own about the law or

Charge to the jury - Charbonneau, J.

the views which counsel may have expressed about the law, insofar as those views contradict what I say to you concerning the law applicable to this case. There is a simple reason for this. All my decisions on the law, whether as part of my charge to you or on any issues of law, which I decided in your absence, are fully recorded and available to the Court of Appeal for review. If I am wrong on a point of law, the Court of Appeal will not hesitate to correct me. On the other hand, if you decide not to follow my directives on the law, there will be no record of this and no way for either party to seek relief from the Court of Appeal. While I am the judge so far as the law, you have the sole and exclusive authority to determine the facts. As jurors, it is your exclusive duty to decide all questions of facts submitted to you and for that purpose, to determine the effect and value of the evidence.

Charge to be considered as a whole:

Please consider my instructions as a whole. Do not attach any undue weight to a certain sentence or individual part and ignore the rest. After I have concluded my charge and you have retired to consider your verdict, it is the practice of the Court to invite counsel to make submissions as to any additional charge they consider necessary. If I accept their submissions and recall you after you have commenced your deliberations, there is always a danger of you placing undue emphasis on what I may say on your recall. I

Charge to the jury - Charbonneau, J.

must - you must not do that. You will consider what I might say then with what I'm saying now as one complete instruction.

How should jurors approach their task?

When you retire to your jury room, I would ask you to first select a foreperson. He or she will act as a chairperson to preside over your discussions, which may be examined in an orderly way. Ultimately, your foreperson will announce to the Court the verdict you have arrived at. The attitude and conduct of the jurors at the outset of their deliberations are of the greatest importance. I suggest that you avoid expressing too definite an opinion in the early stages of your deliberations. If you listen calmly to the arguments of your fellow jurors and put forward your own views in a calm and reasonable way, you will be able to arrive at a just and proper verdict. In dealing with this case, I would ask that you deal with it in the same manner as you would expect an honest and partial judge to decide it. You must set aside all feelings of sympathy, prejudice or passion. The law is no respecter of persons. Justice must be administered fairly and impartially.

Burden of proof:

During the course of this charge, I will be referring to the burden of proof, which is what a party must prove to succeed in his action or defence. In this case, your verdict will be

given in the form of answers to certain questions, which I will review with you in some detail later or you give a general verdict. When I discuss these questions with you, I will indicate on whom the burden of proof lays in respect of each question. When I say that a party has the burden of proof of satisfying you of a proposition or issue, this means that the party must prove the proposition or issue by a preponderance of evidence. The term "preponderance of evidence" means such evidence, as when considered and compared with that opposed to it, persuades you on the balance of probability. In the event that the evidence is evenly balanced so that you are unable to say that the evidence on either side of an issue preponderates, then your finding upon that issue must be against the party who has the burden of proving it. In a criminal trial, the guilt of an accused must be proven beyond a reasonable doubt. That heavy burden does not exist in civil proceedings such as these. It is only necessary, in this type of action, for the party who has the burden to establish a proposition or issue by a preponderance of evidence. If you can say in respect of a particular issue, we think it more probable than not, then the burden of proof has been met. Now, it is very important for you to bear in mind that in determining whether an issue or proposition has been proven by a preponderance of evidence or on the balance of probabilities, you should consider all of the evidence bearing

upon the issue. In this case, as a result of Mr. Rancourt's decision not to participate in the trial, you have not heard any evidence or submissions contrary to the position of the plaintiff. However, the plaintiff still has to convince you on a balance of probabilities of each element she is required to prove to succeed in this action.

How to weigh testimony:

In weighing the testimony of witnesses, you are not obliged to decide an issue in conformity with the majority of the witnesses. You can, if you see fit, believe one witness against many. The test is not in the relative number of witnesses but in the relative force or strength of the testimony of the witnesses and with respect to the testimony of any witness, you can believe all that that witness has said, part of it, or you may reject it entirely. In determining the credit to be given to the evidence of a witness, you should use your common sense and your knowledge of human nature.

Judge's comments on the evidence:

Under our system of law, the judge has the right to comment upon the evidence of witnesses, their credibility or the inferences to be drawn from the evidence. If I do so, I want to emphasize that you are in no way bound to follow my opinion so far as the facts are concerned. It is your duty to place your own interpretation on the

5 evidence and if your views are at variance with mine or if you disagree with my comments, you not only may, but it is your duty to disregard my views or opinions in the facts and to give effect to your own. As I said, you are the sole judges of the facts, not I.

Inferences:

10 Now, evidence may be either direct or circumstantial. It is direct evidence if it proves the facts without an inference, which in itself, if true, conclusively establishes that fact. The circumstantial evidence, if it proves a fact from which an inference of the existence of another fact may be drawn. In considering the evidence, you have the right to draw all reasonable inferences and I instruct you that any fact proven by reasonable inference from the evidence is just as well proven as facts established by direct evidence. However, 20 inferences must be based on evidence and not on mere conjecture or speculation.

Admissions:

25 In this trial, certain facts were admitted by the defendant. These admissions were made by the defendant in response to a request to admit, served by the plaintiff on the defendant during the discovery process. Now, these admissions are contained in Exhibit 30. As a result of these admissions, you must accept these facts as proof. 30

They are conclusive for the purposes of this trial.

Expert evidence:

I'm now going to tell you how you should go about examining and applying the expert evidence you heard in this case. In this trial, Camille Nelson, the Dean of Suffolk University Law School, gave evidence as an expert witness. She was qualified to give expert evidence because of her special skill, training and knowledge in the fields of the history of racism, the language of racism and generally, the experiences of the individuals of the black community and racism. Now, normally, witnesses are limited in the opinions they may give. Their opinions must be based on personal experience or observation. However, in the case of an expert witness, the rule is not quite so strict. Expert witnesses are witnesses who are particularly qualified to help you understand issues beyond our common knowledge or experience and they are allowed to state opinions about the facts in their area of expertise. Therefore, Dean Nelson was allowed to give her opinion on the special meaning the words "house Negro" have in the black community in Canada. It is up to you to decide how much weight you will give to an expert opinion. You do not have to accept the testimony or the opinion of an expert witness. The only reason an expert is allowed to give an opinion is to help you decide the issue of whether "house Negro" has

a special meaning for black people in Canada, which may be beyond the knowledge of the ordinary citizen. This extended meaning is known as true innuendo and must be proved by specific evidence. You should carefully consider the testimony and opinion of an expert witness just like you should carefully consider the evidence of any other witness. You should consider the qualification of the expert; examine Dean Nelson's training and experience and consider the level of her competence in the field. I would also suggest that you ask yourselves whether the expert was impartial or whether she appeared unreasonably to favour the party who called her as a witness. If you are satisfied with the qualification and impartiality of Dean Nelson and find that the evidence supports the assumption used by the expert, you should not reject Dean Nelson's opinion without good reason. If however, you are of the view, on a consideration of all of the evidence in this case, that the opinion of Dean Nelson should not be accepted by you, you are at liberty to reject it.

Read-ins:

During the trial, counsel for the plaintiff read to you certain excerpts from the transcripts of the examination for discovery of the defendant. I will now tell you what use you can make of that evidence. Those portions of the discovery of the defendant, read to you by counsel for the plaintiff, constitute admissions by the defendant

and may be used for or against the defendant in these proceedings. You may use the admissions against the defendant but if there is other evidence on the same point, you are at liberty to weigh the whole of the evidence and accept or reject such portions as you see fit on that particular issue. You may also use any part of the read-ins that you conclude support the position of the defendant in coming to your verdict. You must decide case only on evidence heard. I remind you that you are to reach your decision only upon the evidence given by the witness in this courtroom or contained in the exhibits filed during the trial or in excerpts from the transcripts of the examination for discovery that the defendant read during the course of the trial. Things you see or hear in the media or through the Internet are not evidence and you must ignore them. The same thing applies to any rumours that might circulate about this case. There's a good reason for this rule. Media reports and rumours may be entirely unreliable. Neither party has an opportunity to reply to these out of court rumours or accusations, nor can they cross-examine their source or present evidence in reply. Therefore, you cannot pay attention to such things. You must not use the fact that Mr. Rancourt chose to end his participation in the trial for him or against him. As far as you are concerned, for the purpose of your decision, that fact is a totally irrelevant fact. The Court of Appeal

will be in a position to deal with any issues that may arise from Mr. Rancourt's decision to not participate in this trial. This is the proper way to address these issues in Canada. Do not concern yourself with any such issues.

Overview of the case:

In this case, the plaintiff, Joanne St. Lewis, is claiming damages for libel against the defendant, Denis Rancourt, for publishing allegedly defamatory statements on his website, U of O Watch. The statements complained of are set out in the highlighted paragraphs one to eight in Exhibits 3 to 4. In the questions that you will answer, the plaintiff has set out what she submits is the natural and ordinary meaning of the words complained of in each highlighted paragraph one to eight. It is for you to decide if the words complained of have the alleged meanings on the basis of their natural and ordinary meaning, including inferences or insinuations that naturally flow from them. The plaintiff also submits that the words "house Negro" bear extended or special meanings for members of the black community in Canada, so called true or legal innuendoes. Now, the evidence is uncontested that all of the highlighted paragraphs one to eight were published on the U of O Watch website, which is an online blog on which the defendant posts article and comments relating to activities at the University of Ottawa. Mr. Rancourt is the

moderator and administration of the website. He has admitted that he published the words complained of and that those words were about the plaintiff, Joanne St. Lewis. Mr. Rancourt is a former professor of physics at the University of Ottawa. He was dismissed by the university in 2009. Whether the university had or did not have just cause to dismiss Mr. Rancourt is not relevant to these proceedings. In addition, the fact that the University of Ottawa agreed to pay for Professor St. Lewis' lawyer's fees is irrelevant to the issues you have to decide. The defendant previously argued that this was an abuse of process but the courts have dismissed his allegations and ruled there was no improper motive on the part of the University of Ottawa agreeing to pay the legal costs of one of its employees. The plaintiff, Joanne St. Lewis, has been a tenured professor at the Faculty of Law at the University of Ottawa since the year 2001. She was the only black woman in her law class when she graduated in 1983. She was the only black woman amongst the persons called to the Ontario Bar in 1997. She was a bencher of the Law Society of Upper Canada from 2001 to 2009. As part of her duties as bencher, she sat as a judge on the disciplinary panels. She obtained many awards for her work in the field of human rights generally and in relation to the promotion of justice for the black community. At the relevant time, she was the Director of the University of Ottawa Centre for Human Rights

5 Research and Education. She was asked by the university's administration committee to review an annual report published by the Student Appeal Centre alleging unfairness and systemic racism in university's academic fraud process. Professor St. Lewis prepared an evaluation report expressing negative views about the unprofessional tone of the SAC report and the methodology used by the SAC to reach its conclusions. Professor St. Lewis made 10 recommendation to the university to improve the procedural aspects of the process and a recommendation that the university conduct an independent assessment to determine whether systemic racism plays any part in the academic fraud process. So, that's the setting. That's the background of this case.

20 The legal issues and the evidence relating to them:

25 Now, the first matter is the plaintiff must prove on a balance of probabilities defamation, that the words defame her. So, the requirements of defamation in law are as follows: the plaintiff, in a defamation action, is required to prove three things: one, that the words used by the defendant were about the plaintiff; two, that the words used by the defendant were defamatory in the sense that they would tend to lower the plaintiff's reputation in the eyes of a 30 reasonable person and three, that the words were published, meaning that they were communicated to

at least one person other than the plaintiff. The plaintiff must prove each of these three elements of a libel action on a balance of probabilities. If you find that the plaintiff has failed to prove one or more of these elements, you must dismiss the case but if you find that all three of these elements are established on a balance of probabilities, falsity and damage are presumed. The plaintiff is not required to show that the defendant intended to do harm or even that the defendant was careless. If the plaintiff proves the three required elements, the onus then shifts to the defendant to advance a defence in order to escape liability. If no defence is established, then you will go on to assess the damages payable by the defendant. The defendant here has not introduced any evidence establishing a defence. Therefore, there is no defence for you to consider.

Okay, let's look at each requirement. The first requirement, the words in highlighted paragraphs one to eight of Exhibits 3 and 4 must be about the plaintiff. Well, it is my role to decide whether the words are capable of being about the plaintiff as a matter of law. I had to take this first decision. Are they capable? But in this case, I have decided that they are capable about - being about the plaintiff but the defendant has specifically admitted that the impugned words were about the plaintiff. So, his admission, by

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itself, is conclusive of this issue and therefore, you are not asked to answer any question about this element. The admission becomes the proof that was required. Second requirement, the words in highlighted paragraphs one to eight of Exhibit 3 and 4 must be defamatory. So, on the issue of defamation, this is the central issue that you have to decide in this trial. The plaintiff must prove that the words in highlighted paragraphs one to eight were defamatory. That means that they would tend to lower the plaintiff's reputation in the estimation of right thinking members of the community. It is my role to decide whether the words highlighted in paragraph one to eight are capable of being defamatory as a matter of law. I have decided that each statement set out in the book of questions for the jury at Tab A are capable of being defamatory. It is now your role to decide whether those words are, in fact, defamatory. Although I have said that as a matter of law the words in highlighted paragraphs one to eight of Exhibit Number 3 and 4 are capable of being defamatory, that does not mean they are actually defamatory. It is your role to decide whether the words did or did not actually defame the plaintiff.

Natural and ordinary meaning, also called false innuendos:

In deciding whether the words are defamatory or not, you should consider the articles or the

posts there, as a whole. You should decide whether or not the words would discredit the plaintiff or might tend to lower the plaintiff's reputation in the estimation of reasonable members of society, generally, or expose the plaintiff to hatred, contempt or ridicule. It does not matter what the defendant would say those words mean nor does it matter what the plaintiff says those words mean. It matters what reasonable men and women, hearing those words, would think and understand. You must consider any natural and ordinary meaning arising from the words as well as any innuendo or insinuations that may be drawn or inferred from them, so called false innuendos. Ask yourself what meaning a reasonable person would give to the statement in question and consider the context in which it was made. A reasonable member of society is an ordinary fair person who is reasonably thoughtful and informed rather than someone who is overly fragile and has an overly fragile sensibility. So, I encourage you to use your common sense.

Legal innuendoes:

The plaintiff has set out in her pleadings a number of extended meanings or true innuendoes, which she wants you to find would be understood by members of the black community in Canada when reading the words "house Negro". Now, those are found at Tab B of the book of questions for the jury. It is a question for you to decide whether

in fact they bear those extended or special meanings. The plaintiff has the burden of proving that extended or special meanings. In order for you to decide whether the plaintiff has satisfied her burden, you will have to consider the expert evidence of the dean of Suffolk Law School, Camille Nelson. You should consider each highlighted paragraph one to eight in Exhibits Number 3 and 4 in the context in which it was written when you get into the jury room. You should consider each article as a whole when determining whether it is defamatory. You should read each paragraph again and satisfy yourselves whether or not the words in the highlighted paragraphs one to eight would discredit the plaintiff in the eyes of reasonable men or women reading that article for the first time. What would reasonable men and women in the community, reading the two articles, understand each statement in Tab A to mean? What would a member of the black community in Canada understand each statement in Tab B to mean, in relation to house Negro? Now, the onus is on the plaintiff to satisfy you on a balance of probabilities that the words in their natural and ordinary meaning or by legal innuendo are defamatory of her. If she succeeds in establishing that the words in their natural ordinary meaning or by legal innuendo are defamatory, then that is sufficient.

Now, obviously, I will very briefly review with you the evidence. It hasn't been a very long

case and Mr. Dearden has reviewed with you extensively the evidence but on this, in determining what you will have to look at, let me point out some of the evidence. Now, your starting point obviously are the words themselves and as I indicate, and you'll have to read them carefully as a whole, but you have to look at them in the context in which they were written. Now, the context is what the defendant is addressing in his blog, how he says it, what message he's conveying about the plaintiff's report and it's the - you should consider the evidence of the plaintiff herself in relation to her report and the evidence of Mr. Rock and Mr. Major in relation to what exactly the plaintiff was asked to do. You should consider her report, keeping in mind her mandate was to evaluate the SAC report, and also her conclusions in her evaluation. And in that context, you then examine carefully the words that are published by Mr. Rancourt and then you ask yourself the following question: what would reasonable men and women reading these words think or understand? Would those words tend to discredit the plaintiff or tend to lower her and her reputation in the estimation of members of society generally or possibly expose her to hatred, contempt or ridicule? You will need to consider the evidence of the plaintiff and various witnesses as to who the plaintiff is. In other words, her standing in the community or position in the community, the position she

occupied, her profession as a lawyer, as a law professor and her long-time work in the field of human rights and anti-racism. So, you have to look at that and consider that evidence and see if you find that that is so, that you accept that because obviously, her professional life, her reputation and so on, will have great bearing if you find that she had this position on whether these words, that's another context of how these words will likely affect her and defame her and lower her as a professional in that field, as a lawyer, as a law professor, as someone who puts herself out as being - trying to deal with the racism and problems relating to racism. There's evidence that you'll have to consider that come from the plaintiff, also from documentary evidence that she is a woman who has built a tremendous reputation as an advocate against racism. So, that evidence, you have to consider. You have to weigh that and consider that and there's evidence that she received many awards and been sought by different organizations for competence, integrity and expertise and she was a leader of the bar, having been elected benchner on many occasion. This is important evidence. You have to weigh that evidence, consider that evidence, because if you find that that is the case, this is something that helps you understand whether or not the words defame her as in relation to that reputation she has built and as to her professional life in relation to how what defamation is as I explained it to you just

5 before. Now, in relation to the alleged legal
innuendoes, I won't go and tell you much more on
this, but the - you have to look at - it's the
evidence of mainly - it's the evidence of Dean
Nelson and I would encourage you to look
carefully at Exhibit 10, which is her report and
her conclusion as an expert after you have
reviewed whether you're satisfied with her
competence in the field, expertise and her
10 impartiality. You have to determine whether
you're satisfied and you accept that opinion that
the word "house Negro" has the special or
extended meaning for members of the black
community. And you will recall, I don't need to
recall, but her conclusions are clear that we're
15 talking of an extended meaning, which is being a
traitor to their race, to be - to have simply
abandoned the black community and so on. So,
I'll leave that with you and put - that's the
evidence you have to examine on those matters.
20

Now, let's talk about damages. Oh, I'm sorry,
let's go to the third requirement first, then
deal with the third requirement. The third
25 requirement are that the words were published to
at least one person. Now, again, the words
complained of in the highlighted paragraphs one
to eight of Exhibits 3 and 4 must have been
communicated to at least one person. In law,
30 that is to say they were published. Now, the
defendant has admitted publishing all the

included words on his U of O Watch website. The admission is conclusive of this issue.

Now, let's turn to damages.

Damages:

In all libel cases, there is a presumption in favour of the plaintiff that she has suffered damages. Once the plaintiff proves that the defendant published the statement about her and can show that the words are capable of bearing a defamatory meaning, there is no need to go further and prove damages. In libel law, malice, the falsity of the words and damages are presumed. In libel actions, damages are at large. That is, they are not limited to a pecuniary loss, which can be specifically proved. An individual plaintiff is entitled to compensatory or general damages for both, a) the injury sustained as a result of the lessening of the esteem in which she is held in the eyes of the community because of the defamatory statements and, b) the injury, which the defamatory statement caused to her feelings. When assessing what would be appropriate as compensation, you should take into account any mitigating or aggravating factors. You're entitled to consider the conduct of the defendant, his conduct of the case and his state of mind in determining whether the damages had been aggravated. If the plaintiff can satisfy you that the defendant was actuated by malice in publishing the defamatory words, this finding of

malice will entitle you to consider an award of aggravated damages. Malice will be established if it can be shown that the defendant was motivated by spite or ill will or some other improper purpose. You are required to arrive at an amount by way of compensatory or general damages, which would include amounts awarded for vindication of reputation and injured feelings. You will have to assess the amount of damages against the defendant and will have to assess the conduct of the defendant and determine if his conduct has aggravated the damages. The assessment of damage is for you to decide.

Now, nominal damages:

Nominal damages are awarded if you conclude that the action was properly brought, but the plaintiff has suffered no particular or special damage, or where the plaintiff has cleared her character as a result of this trial and no substantial damage has been suffered by the plaintiff. In such circumstances, it would be appropriate to award a small amount by way of damages. My review of the evidence leads me to the conclusion that this is not a case where nominal damages would be adequate. It is, however, for you to decide.

General damages:

General damages are awarded where you endeavour, as representatives of the community, to arrive at a figure, which will fairly compensate the

plaintiff for the injury, which she, in fact, suffered. In assessing the damages, you should, as nearly as possible, award that sum of money, which will compensate the plaintiff for the injury she has suffered. A perfect compensation or exact mathematical compensation is not possible and would be unjust. You must therefore bring your reasonable common sense to bear - I think there's a missing clause there. What you must do - and I think there's a missing sentence there, but what you must do is that you must bring - you have to use your common sense and say, "What is the award will be fair to all parties?" Fair, both for the plaintiff and the defendant. Now, you should remember that this is the only occasion on which an award of damages can be given. Under our law, the plaintiff must sue, in this action, for all her loss and no subsequent action may be brought to increase or decrease the awards made by you. That's it. One time. You should strive to fix an amount of money that will reasonably and fairly compensate the plaintiff for the damages, which she has suffered. The amount of that should be - the amount of the award should be reasonable, not extravagant or oppressive and your aim is - should be to reach a fair balance, neither too much, nor too little. In assessing these damages, you are entitled to take into consideration the conduct of the plaintiff, her position and standing in the community, the nature and seriousness of the libel, the mode and

5 extent of the publication, the absence or refusal
of any retraction or apology and the whole
conduct of the defendant from the time when the
libel was published down to the very moment of
your verdict. You should also allow for the sad
truth that no apology or retraction or
withdrawal, at this stage, can ever be guaranteed
to completely undo the harm that is done or the
hurt it has caused.

10 Now, let's review briefly the evidence that you
should be looking at. Again, I'll just go over
it very quickly, because certainly Mr. Dearden
has very extensively reviewed all of the
15 elements, which may - which should be taken into
account. Now, so the question is how to
determine an amount that will reasonably and
fairly compensate the plaintiff for the damages
that she has suffered? Well, to do that, I would
20 suggest that you consider the following evidence.
Obviously, again, you have to look at all of the
evidence relating to her position and standing in
the community and her professional life. And I
reviewed that with you. The impact it has on her
25 professional life and on her personal life, but
certainly, as a - as I say, because of her
standing as an expert and a person who has been
working in this area and has acquired this
30 reputation of impartiality and of competence and
of integrity, that's something you have to look
at to determine the amount of compensation. You
should look at her conduct and by that, I mean

Charge to the jury - Charbonneau, J.

you should look at the - all the evidence surrounding the mandate she received and how she did it in relation to the evidence that she had nothing to do with the defendant's dismissal and that she did her work consciously and dependently and complete - and competently. You should look at her evidence, at the evidence of President Rock and of the Vice-President Major and her evidence, at one point, where she mentioned that she feels that she was seeking collateral damage in all of this and it is my own view that there's a very good conclusion that that was the case. And - but it's for you to decide and you look, naturally, on the impact on her. I've already talked about the evidence, you look at - was there a impact on her professional life? Well, you know about the fact that she had to reduce her work, her administrator work for the - she had to - the number of students now that are involved and so on and so forth and how it can impact her in relation to her various mandates that she gets and that she carries out with other organizations and so on but also, the impact on her emotionally, you'll have to review that and it has been done by Mr. Dearden, but you have to review her evidence, how it impacted her emotionally, physically, and how it affected her health. You have the therapist testified that she had to provide her services, her medical leave and so on. And obviously, you will find on an emotional and physical impact on her, you'll have to look carefully at the evidence of Dean

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Feldthusen and Professor Currie, her mother and her friend, Jacqueline Beckles and Denis Laberge, which all talk about the impact it had on her. So please, consider all of that carefully and decide what evidence you're accepting and what facts you can draw from that evidence and you certainly can look at the length and the repetition of the defamatory publication. There is evidence for you to consider that it started and it continued relentlessly for many - and it - for months after months since the beginning and that it came from different sources, which were prompted by the defendant. So, if you accept that evidence, if you weigh that evidence and that will - these are - this is important evidence for you to consider in determining compensation, what is fair, reasonable in the circumstances because of that.

Now, in relation to - let's turn now to aggravated damages because you may, if you come up to an amount of aggravated - of general damages, you've decided what's a fair compensation, you'll then have to decide whether this is a proper case to award aggravated damages. Aggravated damages - now, on page 21, are awarded to compensate a plaintiff with an extra measure of damages. Aggravated damages are only justified if the defendant was motivated by actual malice, which increase the injury to the plaintiff either by spreading further afield the damage to the reputation of the plaintiff or by

increasing the mental distress and humiliation of the plaintiff. These are a restricted head of damages and take into account increased mental distress, humiliation, anxiety suffered by a plaintiff as a result of the malicious conduct of the defendant but they are compensatory in nature. The factors you can consider in determining whether aggravated damages should be awarded overlap, to some extent, with the factors relevant to general damages. The conduct of the defendant, before and after the publication of the defamatory statements, his conduct of the case and his state of mind, are all matters, which the plaintiff may rely on as aggravating her damages. Aggravated damages may be awarded where the defendant's conduct has been high-handed or oppressive, thereby increasing the plaintiff's humiliation and anxiety arising from the defamatory statements. Another factor to consider is the defendant's failure to apologize for or retract the defamatory statements and whether the defendant repeated or republished the libel. In order for you to award aggravated damages, the plaintiffs [sic] must convince you on a balance of probabilities that the defendant acted with actual malice. Now - so, she has this onus. So, the question will be did the - was the defendant actuated by actual malice? The definition of actual malice can be summarized as follows: the defendant is actuated by actual malice if he or she publishes a defamatory statement, knowing it was false or with reckless

indifference to whether it is true or false or for the dominant purpose of injuring the plaintiff because of spite or animosity or for some other dominant purpose, which is improper or indirect. Evidence of actual malice may be extrinsic or intrinsic. Malice may be inferred from the language used in the defamatory statements. Now, actual malice is to be distinguished from malice in law, which is presumed to be present upon proof of the publication of a defamatory statement. Stated another way, actual malice includes, but is not confined to its popular meaning of making a statement for dominant purpose of harming someone because of personal spite or ill will. Actual malice includes every unxious defiable dominant intent to inflict injury on the person defamed. Actual malice also includes acting out of some other dominant improper motive such as anger. You need not find what the wrong motive was, provided you decide there was such a motive. Now, if a person publishes a defamatory statement that he or she knows is untrue, that's evidence of actual malice. If a person publishes a statement recklessly with indifference to whether it is true or false, that also constitutes actual malice. An honest belief in the truth of the statement will, in general, be conclusive evidence that the defendant acted without malice. He may not have acted reasonably, provided he acted honestly. Knowledge that the statement was false, on the other hand, would generally be

conclusive evidence that the defendant was actuated by actual malice. Failure of a defendant to make inquiries as to - as it was reasonable for him in the circumstances to conduct before he published a statement, may be evidence of actual malice. It may be due to neglect, lack of inquiry, that is, an indifference as to whether the statement was true or false or it may be due to prejudice or bias on the part of defendant and such prejudice will be evidence of actual malice. If a person, through anger or some other dominant wrong motive, has allowed his mind to get into such a state as to make and pass aspersions on other people, regardless of whether they are true or false, it has been held that a jury is justified in finding that he or she has abused the occasion and can constitute actual malice. So, was the defendant's mind in such a state that he recklessly disregarded whether he published - what he published was true or false? Now, that would be evidence of malice. You can find actual malice if there is any dominant improper motive or dominant improper attitude of mind, which affects what was published. The defendant's conduct, prior to and during this trial, may afford evidence of actual malice. Additional factors to consider as to whether the defendant was motivated by actual malice are the omission of significant information that contradicted the defendant's thesis of the story, reporting only one side of the story, failure to provide the

5 plaintiff with a fair opportunity to defend
against the defamatory statements or a repetition
of the defamatory statements. All these factors
can be considered by you, in determining whether
there's actual malice on the part of the
defendant.

10 I will say very little on the evidence. You've
heard the evidence. There is evidence, no
apology, evidence of republication many, many
times; evidence of not allowing the plaintiff,
not to provide a opportunity to defend and so on
and so forth. You have to consider that
evidence. You have to decide whether the
15 evidence, that you accept that evidence and if,
after reviewing all of that evidence, which was
reviewed with you with Mr. Dearden, he submits
that evidence to you, you analyze that evidence,
you decide whether you come to the conclusion
20 that the defendant was motivated by this actual
malice and you decide and you look at this and
determine whether the evidence then satisfies you
that there is a need for an increased amount
because there has been increased injury because
25 all of that to the plaintiff, increased damages
to the plaintiff, which requires a - over and
above what would be a fair compensation for
general - that you have decided for general
damages.

30 Punitive damages:

Well, this is the final type of damages, which

may be appropriate in a defamation case. Punitive or exemplary damages, on the other hand, are awarded in exceptional cases, in situation where the defendant's conduct is so malicious, oppressive and high-handed that it offends your sense of decency. They indicate the displeasure of the jury at the defendant's conduct and serve the societal purpose of punishing the defendant and deterring him from engaging in similar conduct in the future. Since punitive damages are damages over and above full compensation, they should be awarded only if they achieve some rational purpose. Even where a defendant's conduct merits the condemnation of the court, there's no need to award punitive damages if the compensatory damages themselves can't operate as punishment and deterrence. If, and only if, the compensatory award is inadequate in this regard is an award of punitive damages warrant. So, I will not, again, it's the same evidence you will be reviewing. There is evidence here that, considered very carefully, that could lead to an award of punitive damages but again, you have to apply these principles that I've just given you and you have to decide whether this is such a case, such an exceptional case that requires such an award of damages. We'll take a break now before I finish and we go to the questions. Not much left, but I guess it would be good for everybody and my voice to take a short break. Fifteen minutes.

...JURY RETIRES

(11:18 a.m.)

R E C E S S

U P O N R E S U M I N G :

THE COURT: All right, bring the jury.

CLERK REGISTRAR: All rise.

...JURY ENTERS (11:39 a.m.)

CLERK REGISTRAR: All members of the jury are present, Your Honour. You may be seated.

THE COURT: All right. So, we're now addressing the issue of the questions. There's a book of questions, Mr. Dearden has referred to it and you've each been provided a copy and basically, this will be what you will use or your foreperson will use to provide the jury's verdict. You will note that Tab A, where - what you find in Tab A are the highlighted paragraphs one to eight of - which are find - found on Exhibits 3 and 4 and they have made - been made the subject of questions for you to answer in order to decide if the words are defamatory of the plaintiff, which was - which is the element which remains to be decided as in question and for each highlighted paragraph, you are asked to decide if the words complained of bear the natural and ordinary meaning alleged by the plaintiff and if so, whether reasonable men and women communicating the context of the article as a whole would understand that meaning to be, in fact, defamatory of the plaintiff. So, there's the statement, then there's the meaning that is proposed and then there's for you to answer the two question, where yes, that meaning is - that

you find that meaning to be and whether then that meaning is defamatory. So, it is your task to consider the natural and ordinary meaning of the words in each highlighted paragraph as set out in Tab A of the book of questions for the jury. To do so, you may use your own understanding of the natural and ordinary meaning of the words used, as well as any innuendoes or insinuation that may be drawn or inferred from them, so called false innuendoes. Now, in Tab B of the book of questions for the jury, you are asked to decide whether three of the highlighted paragraphs bear various extended or special meanings when published to members of the black community in Canada. These are alleged true or legal innuendoes and I have discussed this with you already. So again, you review the questions and decide and this is on the - what I just discussed with you in relation to Dean Nelson's evidence. Tab C of the book of questions for the jury deals with whether the plaintiff has established, on a balance of probabilities, that the defendant acted with actual malice and this, naturally will be to - if that's the case, whether you will grant aggravated damages. So, you must consider the definition of actual malice, which I have discussed with you already and consider the conduct of the defendant preceding publication of defamatory statements, the circumstances of the publication and the defendant's subsequent actions, including the conduct of the defence up to and including the trial. Then you have Tab D

of the book of questions for the jury or the question you will need to answer when you decide the issues relating to damages, namely, the amount and the type of damages you may decide to award the plaintiff. So, for each category, there's a possibility for you to award an amount and to indicate it. Tab E of the book of questions, well, that's the general verdict possibility. You are, in a libel action, a jury has the option to deliver a general verdict instead of answering all of the questions that have been set out in Tab A. The more common practice is for you to answer the questions in Tab A, but you may choose to only deliver a general verdict by only answering the questions set out in Tab E of the book of questions for the jury. So, you find either for the plaintiff or defendant and then you decide, accordingly, the damages and the issue of - as set out at Tab E. That's an option you have, if you so choose.

Now, let me give you some final instructions. This is the end of my charge to you and I would like to conclude by again, mentioning your duties as juror in the jury room. When you go to your jury room, it is your duty to consult with one another and to deliberate with a view to reaching a just verdict, based on the facts as you find them and on the law as I have explained it to you, for you. You will be given all of the exhibits so that you may consider them in your room. Do not take a dogmatic position. Keep an

open mind. Listen and account in an impartial manner to what is said by your fellow jurors and put your own views forward in a reasonable way. I would remind you that your first task would be to select your foreperson. He or she will preside over your deliberations and will record your answers to the questions. As I have told you, any five of you can agree on one answer. It need not be the same five on all answers. Any five can agree on one answer and a different five on another answer. After you have retired to consider the verdict, it is the practice of this court to invite counsel to make submissions as to any additional charge they consider necessary. If I accept the submissions and recall you after you have commenced your deliberation, there's always the danger of you placing undue emphasis on what I may say to you on your recall. You must not do that. You will consider what I may say then with what I am saying now as one complete instruction. If after you retire, you require any further instructions from me on any point, you need only indicate to the officer who will be waiting outside of your jury room. He or she will summons the Court so that you can have any such questions answered in court. Now, contrary - in a criminal trial, once the matter is given to the jury, the jury are sequestered. In other words, you are not to - a jury will not separate until they have reached a verdict. This is not the case in a civil matter. You will have to stay together at all times while you're

Charge to the jury - Charbonneau, J.

5 deliberating. That is all through the day, but
once - when the time comes that - if you have not
reached and verdict and it's time to go home,
then you can all go home and come back the next
day for a further day of deliberations. All
right. So, I will ask the registrar to swear the
officers, please.

GILLES DUBÉ AND ASPHE (ph) SANDOVAL: SWORN

10 THE COURT: Well, I wish you good deliberations.
You may go.

CLERK REGISTRAR: All rise.

...JURY RETIRES (11:49 a.m.)

15 CLERK REGISTRAR: You may be seated.

THE COURT: Any submissions?

MR. DEARDEN: No, Your Honour.

DENIS RANCOURT : Bonjour, Monsieur le juge.

INTERPRETER: Hello, Your Honour.

20 LE TRIBUNAL : Bonjour.

INTERPRETER: Hello.

DENIS RANCOURT : Je sais pas si vous avez reçu
un courriel que je vous ai envoyé hier.

25 INTERPRETER: I don't know if you received the
email I sent you yesterday.

LE TRIBUNAL : J'ai lu ça ce matin. J'en ai fait
part au dossier puis y'a été déposé comme une
pièce, oui.

30 INTERPRETER: Yes, I read it this morning. I
shared it on record and it was filed as an
exhibit.

DENIS RANCOURT : Merci.

INTERPRETER: Thank you.

DENIS RANCOURT : Donc, dans ce courriel, j'avais fait des demandes d'accès à des - aux documents que la plaignante a soumis à la Cour pendant ce procès et j'avais l'espoir d'obtenir ces documents. Monsieur Dearden m'a pas répondu, mais effectivement, il refuse de me donner les correspondances et les documents qui ont été soumis pendant le procès alors, je demande à la Cour de assurer que je puisse avoir ces documents surtout en préparation aux motions qui pourraient suivre ou à un appel quelconque.

INTERPRETER: So, in this email, I've made some access requests to documents that the plaintiff had filed in this trial and I was hoping to obtain those documents. Mr. Dearden did not reply to me. In this essence, he's refusing to supply me with documents and correspondence filed during the trial. So, I'm asking the Court to ensure that I can access those documents, especially in preparation for motions that could follow or a potential appeal of some sort.

LE TRIBUNAL : Les documents sont maintenant déposés à la Cour. Ils sont disponibles. Vous pouvez en obtenir copie.

INTERPRETER: The documents are now filed in the court and are available. You could obtain them from the court.

DENIS RANCOURT : Est-ce que ç'a inclus tous les correspondances qu'il y a pu avoir avec la Cour?

INTERPRETER: Does this include the

correspondence that may have transpired between the court?

LE TRIBUNAL : Nécessairement, ça l'inclus les - les correspondances que y'a eu avec la Cour, c'est relativement - y'a eu des *factums*, oui, qui ont été déposés. Vous pourriez prendre connaissance de ça, oui. Y'a eu des décisions que la Cour a prise et ces décisions-là ont été basées sur certains *factums*. En tête là, j'ai pas rien de - comme tel dans tête là, mais y'avait des décisions - j'avais une décision à prendre concernant si certaines des questions étaient capables d'être - capables en droit d'être diffamatoires avant de laisser ça au jury. J'ai pris certaines décisions. Si vous lisez - et cette décision-là a été déposée d'ailleurs. C'est - je pense que vous réferez à un *endorsement* là. C'est la décision que j'ai donnée. J'ai permis certaines. J'ai exclu certaines autres. J'ai déposé une décision à cet effet puis vous pouvez en obtenir une copie. Ça fait partie des choses et ça, naturellement, j'ai décidé ça sur des *factums* qui m'ont été remis sur le droit, qu'est-ce que - les représentations que les demandeurs ont fait. À part de ça, j'ai pris connaissance de certaines suggestions, comme c'est le cas là pour - j'ai soumis une ébauche de mes directives et puis, j'ai demandé à monsieur Dearden de me donner ses commentaires pour voir si y'avait certains changements. Il m'a suggéré certains changements, que j'ai faits. Donc, et finalement, la charge a esquié dans le - la

charge finale que je viens de lire. C'est là, ces choses-là, mais je veux dire y'a pas - tout est là. Je pense que vous pouvez....

INTERPRETER: Necessarily, it includes the correspondence with the Court relatively to - there were factums filed. You could avail yourself of those. There were decisions made by the Court and those decisions were based on certain factums. In mind, I don't have anything specific but there - I had a decision to take [sic] relating to as to whether certain of the questions could be - were capable in law of being able libelous. Before giving that to the jury, I made decisions. Those decisions were filed. I think you're speaking about an endorsement.

That's a decision - I allowed certain questions. I've excluded others and I filed that endorsement, the decision. You can obtain a copy of that. That's proper process. And naturally, that I decided - made those decisions, based on factums made and submissions made and the application of the law. Other than that, I also was made aware of certain suggestions. For example, I submitted a draft of my charge to the jury and I asked Mr. Dearden to give me his comments to see if there were certain changes to make and he suggested certain changes that I did make and the charge is as it has been read in and tendered. It's on the record. Those things, everything is there on the record.

THE COURT: Are there - maybe before I say that, I suppose some of the copies of the factum....

LE TRIBUNAL : En faite, mes copies de *factums* là....

INTERPRETER: In fact, my copies of the *factums*....

THE COURT: I can give him my copies of the *factum* if he wants them. That's.... I don't need them any more. If - those *factums*...

MR. DEARDEN: I...

THE COURT: ...you know?

MR. DEARDEN: Your Honour, my position, for the record here, is that Mr. Rancourt is now a member of the public. He abandoned his defence. He abandoned his trial. He has locked this Court. He is in contempt of court with what he has done, in my respectful submission, since he walked out of here on May the 16th and I object to him even being at the counsel table right now. Now, of course, he's going to use all of this to claim that he's a victim and a martyr and try to bring that up on appeal. I don't know - I don't understand part of the email that he sent to Your Honour last night about deciding that he's gonna now participate again in this trial. As far as I'm concerned, he pulled out of this trial and out is out.

THE COURT: But that's another issue. If he - that I may be called to answer. I don't - called to decide on. I'm just trying to find out if - as a member of the public, he - would he have access to copies of *factum* [*sic*]?

MR. DEARDEN: Yes, he would and I also...

THE COURT: Because...

MR. DEARDEN: ...want to be clear...

THE COURT: ...one would be filed, necessarily
filed with the Court?

MR. DEARDEN: Yeah.

THE COURT: Okay.

MR. DEARDEN: Yeah. But also, Your Honour, and I
wanna be clear here, when I say I object, and I
have in mind that this defendant who always
appeals everything, is going to appeal whatever
happens today and that I'm not saying though that
if he says he wants to show up and make
submissions on injunctions that I'm gonna stop
him from doing that. I wanna reserve my right to
tell the Court of Appeal that as of May 16th,
anything that he says subsequently, they don't
have to deal it but at the same time, I don't
wanna have to come back and do it all over if
they say, well maybe you should've let him but
I'm just putting my protest and my objection of
his presence at the counsel table right now and
in - you know, tomorrow or whenever, whenever the
jury verdict is in, if the jury's verdict is in
favour of the plaintiff, then Your Honour has to
deal with the request for the injunction. You
may have to deal with that anyway, regardless of
the verdict but if he shows up and wants to make
submissions, my position is I'm protesting that.
I'm objecting to that because of his conduct
since he walked out of here on May 16th but let
him do it. Let him make the submissions but I'm
reserving my right to object to anything he says.
THE COURT: Okay. That's a fair position. So...

LE TRIBUNAL : Donc, vous êtes ici - y'a tout ça, c'est disponible que - ce que a été pris en considération pour vous d'obtenir des copies.

INTERPRETER: So, all of that is available. Everything that was taken into consideration for the Court.

DENIS RANCOURT : Il est très difficile d'obtenir des copies des documents liés qui sont dans les boîtes. Donc, j'apprécie beaucoup votre offre de recevoir les *factums* qui avaient été déposés...

INTERPRETER: It is very difficult to obtain copies of documents that are bound in boxes. I appreciate your offer to receive a *factum*.

LE TRIBUNAL : Bien, on me dit qu'ils sont - ils font partis des - qu'il va y avoir une copie dans le dossier de la cour. Je suis certain qu'il va en avoir une. Probablement que le mien va retourner là. Je veux dire vous pourrez en avoir une copie maintenant. Je sais - il va falloir que vous faisiez affaire avec l'administration. Je sais pas comment qu'il vont faire ça, mais j'imagine que comme tout membre du - comme je dis, vous pouvez en obtenir.

INTERPRETER: I am told, sir, that there are copies in the court file, possibly mine will end up there. You will need a copy but you will need to deal with the management. How they're gonna do that, well, as any member of the public, you can obtain copies.

DENIS RANCOURT : Monsieur le juge, vous m'aviez offert de me donner les copies - vos copies des *factums* parce que le *factum* fait pas partie de -

du dossier normalement et j'apprécierais beau...

INTERPRETER: But Your Honour, you offered me your copies, the - of the factums because the factums doesn't - aren't part of the record normally.

LE TRIBUNAL : Bien, on me dit que oui, mais si c'est pas le cas, moi, j'ai pas de problème à ce que vous ayez une copie du *factum* là.

INTERPRETER: I am told that they are. If I - if that's not the case, I have no problem with you having my copies.

DENIS RANCOURT : Merci. Et puis l'autre question que monsieur Dearden vient de soulever là, moi, ma position c'est que je suis un parti dans cette affaire, que je suis un parti pour toutes motions qui peut suivre et que je dois donc recevoir toutes les informations comme si j'étais un parti.

INTERPRETER: Thank you. And the other question I have that Mr. Dearden raised, my position is that I am a party in this matter, that I am a party for any motion that may come and that I therefore need to receive all the information as if I were a party.

LE TRIBUNAL : Ça, c'est une décision que j'aurais à prendre, mais c'est certain que ce que - face à ce que monsieur - il semblerait que j'aurai pas à décider cette question puisque s'il y a des questions additionnelles, comme il semblerait qu'il y en a, concernant peut-être l'injonction, ces choses-là, que - avec proteste - toujours en protestant votre droit de

participer, monsieur Rancourt [*sic*] va se plier à ce que vous disiez ce que vous avez à dire concernant ça. Donc, nécessairement, pour que vous puissiez le dire, il va falloir que - qu'il ait - vous aillez recours de quelque sorte à sa position, mais....

INTERPRETER: That's a decision that I will need to take for sure with regards to what Mr. Dearden, it would seem that I won't need to deal with that issue because if there are further questions, because there seem there will be, as to gard [*sic*] to injunctions and those kinds of things, that in objecting to your right to participate, Mr. Rancourt will allow you to be heard but I - necessarily, you will need to have - to respect his position.

DENIS RANCOURT : Oui. Si je comprends bien, il ne s'objecte pas formellement à ce que je puisse parler. Il, il, il s'objecte, mais en point de principe pour, pour l'avenir, il va me laisser parler. Vous allez me laisser parler, mais il va tout faire pour pas faciliter que je reçoive ces *factums* et les documents qu'il va soumettre, si j'ai...

INTERPRETER: If I understand correctly, he is not objecting formally to my being able to speak but he's objecting in principle, for the future, that you are going to allow me to speak. He will let me speak but he will do everything to not facilitate me accessing those factum...

LE TRIBUNAL : Et...

DENIS RANCOURT : ...bien compris.

INTERPRETER : ...and documents.

THE COURT: There is a factum on injunctions, eh?

MR. DEARDEN: Yes, there is, Your Honour.

THE COURT: Okay. Well, if he's going to answer
- if he is going to participate, you'll have to
give him a copy.

DENIS RANCOURT : Merci, Monsieur le juge.

MR. DEARDEN: Well, again...

INTERPRETER: Thank you, Your Honour.

MR. DEARDEN: ...I object to that, Your Honour,
in principal and just so the record is clear,
that he has decided to take himself out as a
defendant in this action by what he did on May
16th and he can make a copy of the factum himself.
Like he said...

THE COURT: Well...

MR. DEARDEN: ...he's now a member of the public.

THE COURT: ...it's a question of being - you
know, I agree - I tend to agree. If I'm not
going to have to decide this issue, I tend to
agree with you that he - and Mr. Rancourt is out
for the - for all purposes. I agree with that
position but since I - since, from a practical
point of view, you're going to allow him so that
- I mean you have to be practical so you have to
give him a copy.

DENIS RANCOURT : Merci, Monsieur le juge.

INTERPRETER: Thank you, Your Honour.

MR. DEARDEN: I'll do that right now, Your
Honour.

DENIS RANCOURT : Et j'apprécie aussi que
monsieur Dearden est en train de chercher le

document pour me le donner.

MR. DEARDEN: So, I...

INTERPRETER: And I also appreciate that Mr. Dearden is seeking to find the document to give it to me.

DENIS RANCOURT : Il reste une question.

INTERPRETER: There is a....

MR. DEARDEN: So, why don't you wait for a second, Mr. Rancourt, while I find....

LE TRIBUNAL : Okay, attendez une seconde parce que si il veut entendre qu'est-ce que vous dites, il est pas en position pour le faire puisqu'il a la tête dans ses affaires.

INTERPRETER: Wait for a minute there because if he needs to hear what you're saying, he's not in a position because he's rumbling through boxes.

MR. DEARDEN: So, Your Honour, I'm complying with your order to provide Mr. Rancourt a factum on the injunction.

THE COURT: Okay.

DENIS RANCOURT : Donc, c'est un *factum* intitulé « *Factum of Professor St. Lewis permanent injunction and take down orders.* »

LE TRIBUNAL : T'es aussi bien....

THE COURT: You might as well give him a copy of your Book of Authorities because that...

MR. DEARDEN: I don't have....

MS. SEMENOVA: No, we don't.

THE COURT: You don't have...

MR. DEARDEN: No.

THE COURT: ...one? Okay.

DENIS RANCOURT : Mais juste, j'accepterais qu'il

le livre à mon domicile comme il a fait
courageusement avec...

INTERPRETER: But I would agree that they would
serve me at my home as he's done...

LE TRIBUNAL : Non, non, si on va - c'est vous
qui allez courir après. Vous allez aller le
chercher. Si y'en a un....

INTERPRETER: No, no. No, no, you're gonna run
after the documents. If there is one, you're
gonna....

THE COURT: Do you have a Book of Authorities...

MR. DEARDEN: That's unbelievable. It's
unbelievable that this person, who has mocked
this court, been in contempt of this court, can
think that he can demand the documents be
produced to him. It's just...

LE TRIBUNAL : Non, non...

MR. DEARDEN: ...stunning.

DENIS RANCOURT: Sure.

LE TRIBUNAL : ...si vous les voulez, vous allez
devoir vous déplacer.

INTERPRETER: Okay, if you want those documents,
you will need to make the efforts.

DENIS RANCOURT : Je veux bien me déplacer.
Donc, je vais me déplacer à Gowlings.

INTERPRETER: I will make the efforts. I will
make my way to Gowlings.

LE TRIBUNAL : C'est que tout ce qui a là-dedans,
y'a un *factum*, si je comprends bien, puis il doit
avoir des - de la jurisprudence. Donc, c'est
pour ça qu'on - qui supporte leurs positions
concernant pourquoi. C'est normal après un

procès de libelle comme ça, après que le jury -
le jury peut pas descendre - décider des
questions d'injonction. Donc, c'est normal.
C'est la - c'est fréquent que après - lorsqu'il y
a une demande dans la réclamation d'injonction
puis qu'après que le jury a donné son verdict, la
question - la Cour décide si oui ou non il
devrait y avoir une injonction. Donc, c'est ça
qu'on va - c'est ça que vous demandez de
participer? Comme je dis, comme j'ai pas à
décider si je vous permets ou pas puis que pour
des raisons pratiques, on - toute en protestant,
on - ça - on le fait. Je vais demander que vous
- si vous vous présentez un moment quelconque,
qu'on puisse vous remettre une copie des - aussi
des - de la jurisprudence.

INTERPRETER: If I understand, there is a factum
in there and there is case law. So, that's why
that supports their position as to why. It's
normal after a trial, for a liable trial like
this, the jury cannot decide questions of
injunctions. It's normal. It's a normal
occurrence, frequent, when there is a claim with
regards to an injunction after the jury's verdict
has been rendered that the Court decide whether
yes or no there's to be an injunction granted.
So, if you're asking to participate, as I said, I
don't have to decide whether or not, if I'm
allowing you to participate or not, but - and for
practical purpose - perspectives, that you are
doing so, under protest, of course, from Mr.
Dearden but at some point, I will - you will be

remitted....

DENIS RANCOURT : Vous voulez dire me présenter chez Gowlings, n'est-ce pas?

INTERPRETER: I will attend at Gowlings, is that what you're asking?

LE TRIBUNAL : Oui.

INTERPRETER: Yes.

DENIS RANCOURT : Merci. J'accepte ça.

THE COURT: Do you have a copy of - do you have a Book of Authorities?

MR. DEARDEN: No, I don't. I don't have a Book of Authorities for just specifically the injunction.

THE COURT: Oh, I thought you did. So, I - it's my mistake.

MR. DEARDEN: We provided three volumes of Book of Authorities, Your Honour, for all the issues, the damages, the malice, all of them.

THE COURT: Oh, okay, I thought there was one special...

MR. DEARDEN: And my argument by the way...

THE COURT: And so, what you will do then is that you'll give him a list of the cases specifically...

MR. DEARDEN: They're in there.

THE COURT: ...on injunction.

MR. DEARDEN: They're in there.

MS. SEMENOVA: Yeah.

THE COURT: Just the list.

MR. DEARDEN: They're in there, Your Honour.

They're in the factum.

THE COURT: Oh, they're in the factum?

LE TRIBUNAL : Et vous les obtiendrez vous-même.
Okay?

INTERPRETER: So, they're in the factum and
you'll get them yourself.

DENIS RANCOURT : C'est, c'est difficile pour moi
parce que j'ai pas accès au, au même...

INTERPRETER: It's difficult for me because I
don't have access...

LE TRIBUNAL : Vous avez pas accès à la
bibliothèque?

INTERPRETER: Well, you could go to the library.

DENIS RANCOURT : La bibliothèque, oui, mais la
bibliothèque, je veux dire CanLII n'a pas toutes
les décisions et la bibliothèque, c'est un
travail très considérable d'être obligé de
demander permission à la bibliothèque...

INTERPRETER: Yeah, well the library, CanLII
doesn't have all the decisions and the library,
it's a very considerable undertaking to ask
permission.

LE TRIBUNAL : Mais je peux pas demander à
l'autre côté à préparer un livre spécial pour
vous là.

INTERPRETER: Well, you can't ask the opposing
counsel to prepare a book special for you.

DENIS RANCOURT : Non, non. Je veux pas un livre
spécial. J'aimerais qu'on...

LE TRIBUNAL : Bien oui, mais c'est parce qu'ils
n'ont pas de livre séparé.

INTERPRETER: But there is no book. That's
because there is no book.

DENIS RANCOURT : Non. Je - il n'est pas

nécessaire que ça soit le livre séparé.

J'apprécierais beaucoup d'avoir le livre en trois volumes que vient de mentionner monsieur Dearden.

J'apprécierais beaucoup d'avoir simplement ce livre-là...

INTERPRETER: It's not necessary that it be a separate book. I would appreciate to obtain the three volumes that mentioned - Mr. Dearden mentioned. I would appreciate greatly...

LE TRIBUNAL : Non, parce que là-dessus, y'a toutes sortes de choses que vous n'êtes pas impliqué dedans. Vous n'avez pas été impliqué dedans et que vous n'avez rien à dire à propos.

INTERPRETER: No, because there's all kinds of things that you're not involved in. You're - you haven't been involved in and you have nothing to say.

DENIS RANCOURT : Mais c'est habituellement la personne que, que j'ai...

INTERPRETER: But it - this will hurt no one, that I...

LE TRIBUNAL : Okay, mais j'ai...

DENIS RANCOURT : ...ce livre-là.

LE TRIBUNAL : ...décidé là-dessus. Ça fait que on va vous donner une liste puis vous ferez vos devoirs. Okay.

INTERPRETER: Well, I ruled on that. You're going to be given a list and you can do your homework.

DENIS RANCOURT : La, la - l'autre question, Monsieur le juge, qui reste...

MR. DEARDEN: Never ending.

Représentations par Denis Rancourt

INTERPRETER: The other question, Your Honour...

DENIS RANCOURT : ...c'est la suivante. C'est la suivante. Ça, ce commentaire est inapproprié, Monsieur le juge, dans ma soumission.

INTERPRETER: ...remaining, the - is the following. This comment made by Mr. Dearden is inappropriate.

LE TRIBUNAL : Bien, vous devez...

DENIS RANCOURT : Monsieur Dearden...

LE TRIBUNAL : ...appris...

DENIS RANCOURT : ...vient de dire...

LE TRIBUNAL : Vous pourriez...

DENIS RANCOURT : ... « *Never ending* »...

LE TRIBUNAL : ...apprécier qu'il y a un peu de frustration face à votre - la façon que vous avez procédé. Allez-y.

INTERPRETER: Well, you need to appreciate - you need to appreciate the frustration level of your way of going about things, sir.

DENIS RANCOURT : Je, je l'apprécie, mais c'est un manque de professionnalisme à mon - à mon égard.

INTERPRETER: I appreciate that but it's a lack of professionalism.

LE TRIBUNAL : Allez-y. Allez-y. Allez-y.

INTERPRETER: Please move on.

DENIS RANCOURT : L'autre question c'est que je, je dois être informé au sujet de quand le jury va donner son verdict parce que je voudrais l'entendre et donc, y'a une communication, j'imagine. Je sais pas comment ça se passe.

INTERPRETER: The other question is that I need

to be advised or informed as to when the jury will render its verdict because I would like to hear this verdict. So, there's a communication. I don't know how this goes.

LE TRIBUNAL : Bien, vous avez juste à vous asseoir à l'extérieur, si vous voulez, et puis là - ou vous pouvez vous asseoir à l'extérieur puis un de vos compères va vous le dire quand que le jury va arriver. Nous, on le sait pas quand, eh? Puis ça se fait très rapidement. Si le jury là nous disons : « On a un verdict dans le moment. » on prendrait quelques minutes pour rassembler le monde si on était en ajournement. Donc, là, vous pourrez, si y'a quelqu'un ici, il pourra vous communiquer, se tenir au courant.

INTERPRETER: Well, you just need to sit outside, if you wish, or you can sit outside and one of your friends can come and tell you when the jury - we do not know, you know? And so, this happens very quickly, you know. If the jury tells us, "We have a verdict.", we can take a few minutes to round everybody up if we are adjourned but if there's someone here, they - that can be communicated to you to keep....

DENIS RANCOURT : Je, je vais être ici, mais est-ce que ce n'est pas la pratique de la Cour d'appeler les parties en question?

INTERPRETER: And I will be here but is it not practice of the Court to call the parties?

LE TRIBUNAL : Oui, mais vous êtes pas une partie en face concernant le moment là.

INTERPRETER: Yes, but you are not a party.

Représentations par Denis Rancourt

DENIS RANCOURT : Ça n'a pas été déterminé encore.

INTERPRETER: It was not determined.

LE TRIBUNAL : Okay? Non.

INTERPRETER: No.

DENIS RANCOURT : Et donc, pour une raison pratique...

LE TRIBUNAL : Vous avez pas droit à cette courtoisie-là, monsieur, dans - à cause que vous avez décidé de vous - de ne pas participer. Donc - mais c'est facile pour vous de vous assurer en ayant vos gens autour de vous et vous même pour vérifier quand la Cour semble être sur le point de recevoir le verdict. D'accord. On va prendre la pause. On doit attendre pour le résultat.

INTERPRETER: But you do not have a right to that courtesies, sir, given that you chose to not participate. No, but it's easy for you to ensure, having your people around you and yourself to verify when the Court seems on the verge of receiving its verdict. All right. So, we will adjourn and wait for the verdict.

...PROCEEDINGS ADJOURNED (12:04 p.m.)

FORM 2

Certificate of Transcript
Evidence Act, Subsection 5(2)

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10

I, Francine Bourque, certify that this document is a true and accurate transcription of the recording of Joanne St Lewis v. Denis Rancourt in the Superior Court of Justice held at, OTTAWA, Ontario, taken from Recording No. 0411-CR36-20140603-092316, which has been certified in Form 1, by John Curry.

November 1, 2014

(Date)



(Signature of authorized person)
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SUPERIOR COURT OF JUSTICE

5 B E T W E E N :

JOANNE ST. LEWIS

Plaintiff

- and -

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DENIS RANCOURT

Defendant

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P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE JUSTICE M. CHARBONNEAU
on June 4, 2014, at OTTAWA, Ontario

20

25

APPEARANCES:

30

R. Dearden

Counsel for the Plaintiff

D. Rancourt

In Person

(i.)
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W I T N E S S E S

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E X H I B I T S

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Legend

[sic] - Indicates preceding word has been reproduced
verbatim and is not a transcription error.
(ph) - Indicates preceding word has been spelled
phonetically.

Transcript Ordered:	June 28, 2014
Transcript Completed:	December 9, 2014
Ordering Party Notified:	December 9, 2014

WEDNESDAY, JUNE 4, 2014

5 THE COURT: All right, we have two questions,
it's really basically the same question but it's
formulated in two questions and the questions
are, one, for each sting, they are numbered,
they're - there are a number - I suppose they
mean a number of sub-questions. If we answer yes
to one of the sub-questions, does it make the
10 sting defamatory or do we need to answer yes to
all sub-questions in order to make the sting
defamatory? Question two, do we need to find all
eight stings defamatory or only one of the stings
defamatory, in order to make the whole article
defamatory? I think it's simple enough but I'll
15 let Mr. Dearden tell me what you believe is a
proper answer first.

MR. DEARDEN: Well, Your Honour, if I'm looking
at A1, for instance, they can answer yes to 1A
and yes to 1C and answer no to 1B. They can -
20 they don't have to answer...

THE COURT: They can answer only 1C, for example,
and that makes the sting defamatory.

MR. DEARDEN: It makes the sting defamatory. It
makes the article defamatory.

25 THE COURT: Yeah.

MR. DEARDEN: Yeah.

THE COURT: That's what - I agree with you that
it's the same and to the second question, do we
need to file all eight stings defamatory or only
30 one sting defamatory, in order to make the whole
article defamatory? And I suppose then that's in

reference, one was what the article that we're talking about, I suppose, is one is the - the make - the - well, the one with the seven and the one - that's what they call an article, I would presume. Does it make the whole article defamatory or to - do I make only that particularly sting defamatory?

MR. DEARDEN: Yeah, they could find like, for Exhibit Number Three, they could find number one and number four and number six defamatory and that makes that article defamatory, but they have to find something defamatory in number eight for the May article because it's, you know, it's...

THE COURT: So, we agree. So, that's what I'm going to tell them. So, bring the jury in.

CLERK REGISTRAR: All rise.

...JURY ENTERS (1:51 p.m.)

CLERK REGISTRAR: All members of the jury are present, Your Honour. You may be seated.

THE COURT: All right, ladies and gentlemen, I have your question. In fact, there is two questions and I'll read them for the record. Question one reads, for each sting they are - I suppose you mean there are a number of sub-questions and your - if we answer yes to one of the sub-questions, does it make the sting defamatory or do we need to answer yes to all sub-questions in order to make the sting defamatory? And the answer is, if you find one or two, you don't need to find them all as long as you find one, you may find two and - or

all of them, but at least one will - would make the sting defamatory. You don't need to find all of them and the second question, do we need to find all eight stings defamatory or only one of the stings defamatory in order to make the whole article defamatory? On this point, just to point - there's eight stings, one is - seven are contained in one publication and the eighth is on the other. Again, if you find - if we look at the first seven in that article, if you find one, it's sufficient to make the whole article defamatory. Naturally, you got to find something defamatory in the other ones to make the article - that second one, the eighth sting, defamatory. Does that clarify the point?

JURY FOREPERSON: Yes.

THE COURT: Thank you very much for the question. Okay, I'll let you go back at your work.

...JURY RETIRES (1:54 p.m.)

THE COURT: So, this will be J2. J1 was the questions, I guess - if you recall? I think we filed the questions as J1, for the record?

CLERK REGISTRAR: J1 was the charge to the jury.

THE COURT: Oh, I'm sorry, I'm sorry. Not the questions the - no, the questions will come back as a verdict. I'm sorry. So, yeah the charge was J1 and this will be J2 then.

EXHIBIT J2: Questions from the jury - produced and marked.

THE COURT: All right? Thank you. So, we'll wait for the jury.

CLERK REGISTRAR: All rise.

MR. DEARDEN: Your Honour, I had a curiosity question. Why did we call the R exhibits "R"?

What's the R stand for?

THE COURT: Rancan (ph).

MR. DEARDEN: Rancourt?

THE COURT: Rancourt.

MR. DEARDEN: Okay. Okay. I was wondering...

THE COURT: I was thinking, you know, that's a first for me. So, I was saying, I think they - that was the only thing I could think of. All right.

MR. DEARDEN: Thanks, Your Honour.

C O U R T I S A D J O U R N E D

FORM 2
Certificate of Transcript
Evidence Act, Subsection 5(2)

5
I, Francine Bourque, certify that this document is a true and
accurate transcription of the recording of Joanne St. Lewis.
v. Denis Rancourt in the Superior Court of Justice held at 161
Elgin Street, Ottawa, Ontario, taken from Recording(s) No.
10 0411_CR36_20140604_094052 which has been certified in Form 1,
by John Curry.

December 9, 2014

(Date)

Francine Bourque
(Signature of authorized person)
Videoplus Transcription Services ACT number 554-265-0147

SUPERIOR COURT OF JUSTICE

5

B E T W E E N :

JOANNE ST. LEWIS

Plaintiff

10

- and -

DENIS RANCOURT

Defendant

15

P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE JUSTICE M. CHARBONNEAU
on June 5, 2014, at OTTAWA, Ontario

20

25

APPEARANCES:

30

R. Dearden

Counsel for the Plaintiff

D. Rancourt

In Person

(i)
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Legend

[sic] - Indicates preceding word has been reproduced
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phonetically.

Transcript Ordered:	June 28, 2014
Transcript Completed:	December 17, 2014
Ordering Party Notified:	December 17, 2014

THURSDAY, JUNE 5, 2014

(10:39 a.m.)

THE COURT: Well, good morning. I am told we have a verdict.

MR. DEARDEN: Your Honour, one housekeeping matter. Did you want to have entered as an exhibit a clean copy of the questions for the jury, 'cause we haven't entered a clean copy.

THE COURT: Well, they will - I assume we will file the questions, their answers...

MR. DEARDEN: Yes.

THE COURT: ...as their verdict.

MR. DEARDEN: Yes.

THE COURT: And you're saying that there was not one as an exhibit?

MR. DEARDEN: Yeah, we didn't enter a clean copy, like an unanswered version of the questions for the jury as an exhibit.

THE COURT: I didn't think we needed that because once we get the answer, they will have answered the question. That will become their - the next J exhibit. I think we don't need the - another copy. One is enough.

MR. DEARDEN: Okay. Thank you, Your Honour.

THE COURT: All right. So, bring the jury, please. Mr. Registrar, I guess you'll have to put the questions to them instead of them reading them out. I think you'll have to read this one question. They do the words and what is your answer. They'll say yes or no and so on and.... Same thing with all of them. So, you don't have to read this...

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CLERK REGISTRAR: No.

THE COURT: ...but you read the questions A,
B - because there's two questions for each.
If you say yes - if they said no, you don't -
you go to the next one. Okay?

CLERK REGISTRAR: Okay.

THE COURT: So, maybe - do you have a copy?

CLERK REGISTRAR: I do, Your Honour.

THE COURT: Oh, okay. We'll get the
Registrar to read the question and answer and
ask them their answer to each question and...

MR. DEARDEN: Yes, Your Honour.

THE COURT: Unless they did - they decided to
go with a general verdict, which is unlikely
from that question but anyway....

CLERK REGISTRAR: All rise.

...JURY ENTERS (10:43 a.m.)

CLERK REGISTRAR: All members of the jury are
present, Your Honour. You may be seated.

THE COURT: Good morning. So, you have, I
gather, reached a verdict? Who is your fore
person? Would you please - first of all,
I'll ask you, because depending - have you
answered the questions or have you opted to
answer simply a general verdict?

FOREPERSON: We have answered the questions.

THE COURT: Okay. So, what I will ask then
is that the questions will be asked of you,
will be read to you by the Registrar and you
can answer whether it's yes or no and so on,
depending on the circumstances. All right?

CLERK REGISTRAR: I'll just ask...

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THE COURT: Make sure you...

CLERK REGISTRAR: Mic? I'll try. Yeah.

THE COURT: That's fine, you can move to another place to make sure we - it's recorded. Okay. Question one then.

CLERK REGISTRAR: Do the words "Did Professor Joanne St. Lewis act as Allan Rock's house negro?" bear the following natural and ordinary meanings alleged by the plaintiff, A) Professor St. Lewis lacks integrity?

FOREPERSON: Yes.

CLERK REGISTRAR: If the answer to question 1(a) is yes, would reasonable men and women in the community, in the context of the article, understand the meaning to be, in fact, defamatory of the plaintiff?

FOREPERSON: Yes.

CLERK REGISTRAR: Question (b) Professor St. Lewis was biased in the conduct and offering of her evaluation of the SAC report?

FOREPERSON: No.

CLERK REGISTRAR: Question (c) Professor St. Lewis acted in a servile manner toward President Allan Rock?

FOREPERSON: Yes.

CLERK REGISTRAR: If the answer to 1(c) is yes, would reasonable men and women, in the community, in the context of the article, understand that meaning to be, in fact, defamatory of the plaintiff?

FOREPERSON: Yes.

CLERK REGISTRAR: Question 2. Do the words

Joanne St. Lewis v. Denis Rancourt

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"February is Black History month in Canada and the U.S. U of O Watch believe that it is the right time not only to honour black Americans who fought for social justice against matches, but also, to out black Americans who were and continue to be house negroes to masters", bear the following natural and ordinary meanings alleged by the plaintiff?

10
FOREPERSON: Yes.

CLERK REGISTRAR: Professor St. Lewis needs to be outed for acting in a servile manner toward President Allan Rock?

FOREPERSON: Yes.

15
CLERK REGISTRAR: If the answer to the question 2(a) is yes, would reasonable men and women, in the community, in the context of the article, understand that meaning to be, in fact, defamatory of the plaintiff?

20
FOREPERSON: Yes.

CLERK REGISTRAR: Question 2(b). Professor St. Lewis needs to be outed for acting in a servile manner towards the University of Ottawa?

25
FOREPERSON: Yes.

CLERK REGISTRAR: If the answer to the question to 2(b) is yes, would reasonable men and women, in the community, in the context of the article, understand that meaning to be, in fact, defamatory of the plaintiff?

30
FOREPERSON: Yes.

CLERK REGISTRAR: Question 2(c), Professor

Joanne St. Lewis v. Denis Rancourt

St. Lewis needs to be outed for betraying black people or other minorities for personal gain or advantage?

FOREPERSON: No.

CLERK REGISTRAR: 2(d) Professor St. Lewis needs to be outed for acting in an inauthentic manner to the President Allen Rock?

FOREPERSON: I'm sorry I just - I had the wrong page here. It's no.

CLERK REGISTRAR: Question 3, do the words "the same spirit prevailed when civil rights icon Ralph Nader suggested that U.S.

President Obama needed to decide if he was going to be an Uncle Tom, bear the following natural and ordinary meanings alleged by the plaintiff: (a) Professor St. Lewis has put the interest of the University of Ottawa ahead of the interest of black persons or other minorities in order to serve the interest of President Allan Rock?

FOREPERSON: No.

CLERK REGISTRAR: 3(b) Professor St. Lewis has put the interest of the University of Ottawa ahead of the interest of black persons or other minorities in order to serve the interest of the University of Ottawa?

FOREPERSON: No.

CLERK REGISTRAR: 3(c) Professor St. Lewis has acted in an abjectly servile and differential manner to President Allan Rock?

FOREPERSON: No.

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Joanne St. Lewis v. Denis Rancourt

CLERK REGISTRAR: 3(d) Professor St. Lewis has acted in abjectly servile and differential manner to the University of Ottawa?

FOREPERSON: No.

CLERK REGISTRAR: Question 4, do the words "the Student Appeal Centre of the Student Union at the University of Ottawa today released documents obtained by an access to information request that suggest that Law Professor Joanne St. Lewis acted like President Allan Rock's house negro when she enthusiastically toiled to discredit a 2008 SAC report about systemic racial discrimination at the university" bear the following natural and ordinary meanings alleged by the plaintiff: a) Professor St. Lewis acted in an servile manner towards University of Ottawa President Allan Rock, a white male?

FOREPERSON: Yes.

CLERK REGISTRAR: If the answer to the question 4(a) is yes, would reasonable men and women, in the community, in the context of the article, understand that meaning to be, in fact, defamatory of the plaintiff?

FOREPERSON: Yes.

CLERK REGISTRAR: 4(b) Professor St. Lewis acted in a servile manner toward the University of Ottawa?

FOREPERSON: Yes.

CLERK REGISTRAR: If the answer to question

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4(b) is yes, would reasonable men and woman, in the community, in the context of the article, understand that meaning to be, in fact, defamatory of the plaintiff?

FOREPERSON: Yes.

CLERK REGISTRAR: Question 4(c), Professor St. Lewis acted in an inauthentic manner toward University of Ottawa, President Allan Rock?

FOREPERSON: No.

CLERK REGISTRAR: Question 4(d), Professor St. Lewis acted in an inauthentic manner toward the University of Ottawa?

FOREPERSON: No.

CLERK REGISTRAR: 4(e), Professor St. Lewis conducted and authored an evaluation of the Student Appeal Centre Report that was disingenuous or deceitful in order to promote the interests of the University of Ottawa, President Allan Rock, the University of Ottawa or herself?

FOREPERSON: Yes.

CLERK REGISTRAR: If the answer to 4(e) is yes, would reasonable men and women, in the community, in the context of the article, understand that meaning to be, in fact, defamatory of the plaintiff?

FOREPERSON: Yes.

CLERK REGISTRAR: 4(f), Professor St. Lewis sold herself out to the president of the University of Ottawa?

FOREPERSON: Yes.

Joanne St. Lewis v. Denis Rancourt

CLERK REGISTRAR: If the answer to 4(f) is yes, would reasonable men and women, in the community, in the context of the article, understand by meaning to be, in fact, defamatory of the plaintiff?

FOREPERSON: Yes.

CLERK REGISTRAR: Question 4(g), Professor St. Lewis acted without integrity in conducting and authoring her evaluation of the Student Appeal Centre Report?

FOREPERSON: Yes.

CLERK REGISTRAR: If the answer to question 4(g) is yes, would reasonable men and women, in the community, in the context of the article, understand that meaning to be, in fact, defamatory of the plaintiff?

FOREPERSON: Yes.

CLERK REGISTRAR: Question 5, do the words "the newly released ATI records are disturbing far beyond the non-tenured Professor St. Lewis uncommon zeal to serve the university administration" bear the following natural and ordinary meaning alleged by the plaintiff: (a) Professor St. Lewis conducted and authored her evaluation of the Student Appeal Centre Report with a view to obtaining tenure, a promotion or other personal benefit or gain?

FOREPERSON: No.

CLERK REGISTRAR: 5(b), Professor St. Lewis conducted and authored an evaluation of the Student Appeal Centre Report that was

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disingenuous or deceitful in order to promote her self-interest or the interest of University of Ottawa President Allan Rock, and/or the University of Ottawa?

FOREPERSON: No.

CLERK REGISTRAR: 5(c), Professor St. Lewis acted without integrity in conducting and authoring her evaluation of the Student Appeal Centre?

FOREPERSON: Yes.

CLERK REGISTRAR: If the answer to question 5(c) is yes, would reasonable men and women, in the community, in the context of the article, understand that meaning to be, in fact, defamatory of the plaintiff?

FOREPERSON: Yes.

CLERK REGISTRAR: Question 6, do the words "The ATI records expose a high level cover up orchestrated by Allan Rock himself, to hide the fact that the St. Lewis efforts were anything but independent as she characterizes her report on the first page." bear the following natural and ordinary meaning all edged by the plaintiff: 6(a) Professor St. Lewis participated in a high level cover up of wrongdoing?

FOREPERSON: Yes.

CLERK REGISTRAR: If the answer to question 6(a) is yes, would reasonable men and women, in the community, in the context of the article, understand that meaning to be, in fact, defamatory of the plaintiff?

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FOREPERSON: Yes.

CLERK REGISTRAR: 6(b), Professor St. Lewis acted without integrity in conducting and authoring her evaluation of the SAC report?

FOREPERSON: Yes.

CLERK REGISTRAR: If the answer to question 6(b) is yes, would reasonable men and women, in the community, in the context of the article, understand the meaning to be, in fact, defamatory of the plaintiff?

FOREPERSON: Yes.

CLERK REGISTRAR: 6(c), Professor St. Lewis was dishonest in her evaluation of the SAC report?

FOREPERSON: Yes.

CLERK REGISTRAR: If the answer to question to answer 6(c) is yes, would reasonable men and women, in the community, in the context of the article, understand the meaning to, in fact, defamatory of the plaintiff?

FOREPERSON: Yes.

CLERK REGISTRAR: 6(d), Professor St. Lewis conducted and authored an evaluation of the SAC report that was disingenuous or deceitful in order to promote the interests of Allan Rock, the University of Ottawa and/or herself?

FOREPERSON: Yes.

CLERK REGISTRAR: If the answer to question 6(d) is yes, would reasonable men and women, in the community, in the context of the article, understand that meaning to be, in

Joanne St. Lewis v. Denis Rancourt

fact, defamatory of the plaintiff?

FOREPERSON: Yes.

CLERK REGISTRAR: Question 7, do the words "Ironically, the original SAC report was about racial discrimination regarding academic fraud appeals such as when an academic represents - misrepresents his or her work as independent when it is verifiably and factually not independent by any stretch." bear the following natural and ordinary meaning alleged by the plaintiff:

(a) Professor St. Lewis acted without integrity in conducting and authoring her evaluation of the SAC report?

FOREPERSON: Yes.

CLERK REGISTRAR: If the answer to 7(a) is yes, would reasonable men and women, in the community, in the context of the article, understand that meaning to be, in fact, defamatory of the plaintiff?

FOREPERSON: Yes.

CLERK REGISTRAR: 7(b), Professor St. Lewis was dishonest in conducting and authoring an evaluation of the SAC report?

FOREPERSON: Yes.

CLERK REGISTRAR: If the answer to question 7(b) is yes, would reasonable men and women, in the community, in the context of the article, understand that meaning to be, in fact, defamatory of the plaintiff?

FOREPERSON: Yes.

CLERK REGISTRAR: 7(c), Professor St. Lewis

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conducted and authored an evaluation of the SAC report that was disingenuous or deceitful in order to promote the interests of Allan Rock, the University of Ottawa and/or herself?

FOREPERSON: Yes.

CLERK REGISTRAR: If the answer to question 7(c) is yes, would reasonable men and women, in the community, in the context of the article, understand that meaning to be, in fact, defamatory of the plaintiff?

FOREPERSON: Yes.

CLERK REGISTRAR: Question 8, dDo the words "I did not say that Professor St. Lewis acted like a house negro because she is black. I said it because it was reasonable to conclude it in the matter that she acted like a house negro and because it is my reasoned opinion that she acted like a house negro. She did so while attempting to discredit a 2008 Student Union report that alerted the university of its now more than evident problem of systemic racism, see all posts of U of O racism here." bear the following natural and ordinary meaning alleged by the plaintiff: (a) Professor St. Lewis acted in a servile manner toward President Allan Rock, when conducting and authoring her evaluation of the SAC report?

FOREPERSON: Yes.

CLERK REGISTRAR: If the answer to question to 8(a) is yes, would reasonable men and

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women, in the community, in the context of the article, understand that meaning to be, in fact, defamatory of the plaintiff?

FOREPERSON: Yes.

CLERK REGISTRAR: 8(b), Professor St. Lewis acted in a servile manner toward the University of Ottawa when conducting and authoring her evaluation of the SAC report?

FOREPERSON: Yes.

CLERK REGISTRAR: If the answer to question 8(b) is yes, would reasonable men and women, in the community, in the context of the article, understand that meaning to be, in fact, defamatory of the plaintiff?

FOREPERSON: Yes.

CLERK REGISTRAR: 8(c), Professor St. Lewis acted in an inauthentic manner toward University of Ottawa President Allan Rock when conducting and authoring her evaluation of the SAC report?

FOREPERSON: No.

CLERK REGISTRAR: 8(d), Professor St. Lewis acted in an inauthentic manner toward the University of Ottawa when conducting and authoring her evaluation of the SAC report?

FOREPERSON: No.

CLERK REGISTRAR: 8(e), Professor St. Lewis lacks integrity?

FOREPERSON: Yes.

CLERK REGISTRAR: If the answer to question 8(e) is yes, would reasonable men and women, in the community, in the context of the

Joanne St. Lewis v. Denis Rancourt

article, understand the meaning to be, in fact, defamatory of the plaintiff?

FOREPERSON: Yes.

CLERK REGISTRAR: Tab B. Question 1, do the words "Did Professor Joanne St. Lewis act as Allan House - sorry - Allan Rock's house negro" bear the following legal innuendos when published to members of the black community in Canada: (a) person who is a race trader; (b) a person who is a pariah in the black community; (c) a person who, by their actions, is considered to be separated from the black community and to have forfeited their social identity with the black community; (d) a person who has served their bond with the black community and their racial and cultural heritage?

FOREPERSON: Yes.

CLERK REGISTRAR: Question 2, do the words "The Student Appeal Centre of the Student Union of the University of Ottawa, today released documents obtained by access to information to request that suggest that the - that Law Professor Joanne St. Lewis acted like President Allan Rock's house negro when she enthusiastically toiled to discredit a 2008 SAC report about systemic racial discrimination at the university." bear the following legal innuendo when published to members of the black community in Canada: (a) person who is a race trader; (b) a person who is a pariah in the black community; (c) a

Joanne St. Lewis v. Denis Rancourt

5 person who, by their actions, is considered to be separated from the black community and to have forfeited their social identity with the black community; (d) a person has served their bond with the black community and their racial and cultural heritage.

FOREPERSON: Yes.

10 CLERK REGISTRAR: Question 3, do the words "I did not say that Professor St. Lewis acted like a house negro because she is black. I said it because it was reasonable to conclude, in the manner that she acted like a house negro and because it is my reasoned opinion that she acted like a house negro. She did so while attempting to discredit a 2008 Student Union report that alerted the university to its now more than evident problem of systemic racism" bear the following legal innuendo when published to members of the black community in Canada: (a) a person who is a race trader; (b) a person who is a pariah in the black community; (c) a person who, by their actions, is considered to be separated from the black community and to have forfeited their social identity with the black community; (d) a person who has severed their bond with the black community and their racial and cultural heritage?

25 FOREPERSON: Yes.

30 CLERK REGISTRAR: Tab C, was there actual malice on the part of the defendant Denis Rancourt?

Joanne St. Lewis v. Denis Rancourt

FOREPERSON: Yes.

CLERK REGISTRAR: Tab D, damages. Question 1: if you have found any of the words complained of to be in fact defamatory, in what amount do you assess the general damages of the plaintiff?

FOREPERSON: 100,000.

CLERK REGISTRAR: Question 2, should the plaintiff be awarded aggravated damages?

FOREPERSON: Yes.

CLERK REGISTRAR: If the answer is yes, in what amount do you assess the aggravated damages of the plaintiff?

FOREPERSON: 250,000.

CLERK REGISTRAR: Question 3, should the plaintiff be awarded punitive damages?

FOREPERSON: No.

CLERK REGISTRAR: Tab E...

THE COURT: No, we - that's an option, which could...

CLERK REGISTRAR: Okay.

THE COURT: All right. Well, I wish to thank you very much for your services. You obviously worked very hard since you went over this carefully over the last two and a half days, and I hope your experience - you had the chance to see a little bit more what - how the justice system operates. It's unfortunate, in a sense, it was kind of a different trial because of the - Mr. Rancourt's decision not to participate but it's obvious that you listened very carefully

Joanne St. Lewis v. Denis Rancourt

5 and that you did a very good job and I think that your verdict reflects that you listened to everything very carefully and consciously fulfilled your oath that you have taken. So, thank you very much and you are now free to go back to your ordinary life.

MR. DEARDEN: Your Honour, would Professor St. Lewis be allowed to say something to the jury?

10 THE COURT: Yes, yes, absolutely.

MR. DEARDEN: And I thank you.

15 JOANNE ST. LEWIS: I'd just like to thank you very, very much. This has been a difficult process for me and I - it means a tremendous amount to me that your members of my community where I live and paid so much attention to what we offered as evidence and understood the depth of the significance of what happened. I think not just to me but what it would be like for anybody, located in my position, as a professional, and I, I thank you so very much for sending this message and for taking such great care with the work that you had to do. I - from the bottom of my heart, I am so very, very grateful. Thank you very much. Thank you.

20 THE COURT: Thank you. So, we have the book of questions?

25 CLERK REGISTRAR: Yeah.

30 THE COURT: That will be filed as Exhibit J3. That will become the verdict. Thank you. You're free to go. Thank you very much.

Joanne St. Lewis v. Denis Rancourt

EXHIBIT J3: Book of questions for the
verdict - produced and marked.

CLERK REGISTRAR: All rise.

...JURY EXITS (11:03 a.m.)

CLERK REGISTRAR: You may be seated.

INTERPRETER: So, we'll take a while just to
let the emotions but I just want - are we
going to proceed then this morning with the
injunction...

MR. DEARDEN: Yes, Your Honour, I'm ready...

THE COURT: ...part of this?

MR. DEARDEN: ...to go with that but I guess
housekeeping is that you need to enter the
judgment...

THE COURT: Yes.

MR. DEARDEN: ...in accordance with...

THE COURT: Yeah.

MR. DEARDEN: ...the jury's instructions and
endorse the amended trial record?

THE COURT: Yes.

MR. DEARDEN: Do you have an amended trial
record handy? 'Cause I have an extra.

THE COURT: Yes, right here. So, I will
endorse this. We'll take a break and while
I'm doing this, I'll endorse it and read it
into the record and we'll take a short break
and then we'll come back - let's say we take
- we'll start again at eleven thirty and I'll
hear both of you on the issue of injunctions
then.

DENIS RANCOURT : Je vais, je vais faire des
soumissions pour qu'on ne continue pas

Submissions by Denis Rancourt

immédiatement tout de suite. Je vais faire des soumission pourquoi ça serait mieux donner...

INTERPRETER: I will make submissions so that we do not continue immediately. I will make submissions as to why it would be...

LE TRIBUNAL : Bien, vous avez eu les choses de monsieur depuis deux jours là.

INTERPRETER: Well, you've received Mr. Dearden's materials for two days.

DENIS RANCOURT : Oui, et là, je vais faire des soumissions quand même pour...

INTERPRETER: I will make submissions.

LE TRIBUNAL : Pourquoi?

INTERPRETER: Why?

DENIS RANCOURT : Je vais faire des soumissions et je peux les faire maintenant si vous voulez.

INTERPRETER: I will make submissions. I can make them now, if you want.

LE TRIBUNAL : Oui. Oui, oui.

INTERPRETER: Yes.

SUBMISSIONS BY DENIS RANCOURT:

DENIS RANCOURT : C'est que pour continuer avec cette affaire, il y a des interactions entre la partie jury du, du procès et la partie qui suit le jury, qui, qui est à venir et je n'ai pas reçu - y'a, y'a beaucoup de documents que je voulais voir que je n'ai pas pu voir.

Submissions by Denis Rancourt

INTERPRETER: Well, to continue with this matter, there are interactions between the jury and the part that follows the jury that's to come and I have not received - there's many documents that I want to see, that I haven't been able to see.

LE TRIBUNAL : Tout ce que vous avez à voir c'est le verdict maintenant.

INTERPRETER: All you need to see, sir, now is the verdict.

DENIS RANCOURT : Et...

LE TRIBUNAL : C'est tout ce qui compte.

INTERPRETER: That's all that counts.

DENIS RANCOURT : Non. C'est, c'est pas le cas, Monsieur le juge, et...

INTERPRETER: No, that's not the case.

LE TRIBUNAL : Qu'est-ce qui compte le plus?

INTERPRETER: Well, what counts most?

DENIS RANCOURT : ...et, et je vais expliquer pourquoi j'ai besoin de voir les autres...

INTERPRETER: I will indicate why I need to see the other...

LE TRIBUNAL : Okay, allez-y.

INTERPRETER: Go ahead.

DENIS RANCOURT : ...choses. La raison c'est que il y a - pour un injonction, un injonction présuppose que les dommages qui ont été accordés ne sont pas une réparation totale, que c'est pas suffisant et donc, moi, je veux savoir exactement dans quelle circonstance ces dommages ont été accordés. Je veux connaître le...

Submissions by Denis Rancourt

INTERPRETER: The reason is that there are -
for an injunction to be granted, an
injunction presupposes that damages awarded
are not a total reparation and are not
sufficient and I want to know exactly in what
circumstances these damages have been
awarded.

LE TRIBUNAL : Non, vous avez le...

INTERPRETER: No. No. No.

DENIS RANCOURT : ...processus...

LE TRIBUNAL : Non, ce - c'est pas une bonne
- d'autres raisons?

INTERPRETER: This is not - any other
reasons?

DENIS RANCOURT : C'est, c'est ma raison
principale.

INTERPRETER: That's my main reason.

LE TRIBUNAL : Okay, donc, on va procéder à
onze heures et demie.

INTERPRETER: Well, we're going to continue
at eleven thirty.

CLERK REGISTRAR: All rise.

DENIS RANCOURT : Oui, y'avait une autre
raison. Je peux, je peux la présenter après,
mais...

INTERPRETER: Yes, there is another reason.
I can present it after.

LE TRIBUNAL : Non, non. Non, non. Allez-y.

INTERPRETER: No, no, go ahead.

DENIS RANCOURT : L'autre raison, c'est que
je, je n'ai pas eu le temps de préparer
convenablement. Je, je suis autoreprésenté.

Reasons for Judgment - Charbonneau, J.

Je n'ai pas accès facile aux autorités qui ont été listées, pas tous, en tout cas. Y'en - et puis - et c'est des questions compliquées de droit et j'apprécieraï une demie-journée de plus pour préparer mon argument par rapport à ça.

INTERPRETER: The other reason is that I did not have time to prepare conveniently. I am self-represented. I don't have easy access to the authorities that were listed, not all, certainly, and there are complication - complicated questions of law and I would appreciate half a day to prepare my argumentation with relation...

LE TRIBUNAL : Non, je considère que deux jours c'est amplement pour vous préparer. Vous avez eu deux jours pour le faire.

INTERPRETER: I consider that two days has been ample. You had two days to prepare.

CLERK REGISTRAR: Order, please, all rise.

R E C E S S

U P O N R E S U M I N G :

THE COURT: All right. So, the first order of business is to formalize the jury verdict.

R E A S O N S F O R J U D G M E N T

CHARBONNEAU, J. (Orally):

So, I've endorsed the amended trial record as follows: "In accordance with the verdict of

Reasons for Judgment - Charbonneau, J.

5 the jury rendered today and filed as Exhibit
J3, there will be judgment for the plaintiff
as follows: 1) the defendant is ordered to
pay to the plaintiff for defamation, general
damages in the amount of \$100,000; 2) the
defendant is found to having acted with
actual malice in publishing the defamatory
words and is ordered to pay to the plaintiff
aggravated damages in the amount of
10 \$250,000." All right. So, the other
matters, obviously, is one, will be the
injunction. I see that Mr. Rancourt has
again left us.

15 CLERK REGISTRAR: He just stepped out moments
before you walked in to go to the washroom.

THE COURT: Oh...

CLERK REGISTRAR: He'll be back momentarily.

THE COURT: Okay. Yes, best practice.

CLERK REGISTRAR: And the questions?

20 THE COURT: And the questions. That is J3.

CLERK REGISTRAR: Yes, that's...

THE COURT: It's not entered yet but...

CLERK REGISTRAR: From what I understand, you
need to sign and date this copy.

25 THE COURT: Oh, okay.

CLERK REGISTRAR: Thank you, Your Honour.

THE COURT: Thank you.

MR. DEARDEN: Mr. Rancourt's here.

30 THE COURT: Oh, okay.

SUBMISSIONS BY MR. DEARDEN:

5 MR. DEARDEN: There's a couple of other
matters, Your Honour. Pre-judgment, I'm
requesting an order for pre-judgment and
post-judgment interest and I'm also
requesting costs on a substantial indemnity
basis, Your Honour, but obviously, you're not
gonna make a decision on the scale for the
10 amount of cost but what I've done, Your
Honour, is prepared a draft order that
reflects what you just endorsed on the
amended record, which is \$100,000 in
generals, 250,000 in aggravated damages, pre-
judgment and post-judgment interest and
15 defendant ordered to pay cost of the trial of
this action on a scale and an amount to be
determined.

20 THE COURT: You want to give me back the
agreed - I'll indicate the interest, yes.
All right, here's the order. So, I've added
the - and dated the endorsement. All right.
MR. DEARDEN: And Your Honour, before I argue
the injunction and let me also put on the
25 record, 'cause I see that Mr. Rancourt is to
my right and he's at the counsel table and he
was about to stand up and say something, it
is my position that this defendant is no
longer a defendant. He abandoned this trial
and he abandoned his defence on May - the
30 morning of May 16th. So, Your Honour, if you
wanna order me to produce a copy of the

Submissions by Mr. Dearden

compendium that I'm gonna provide you for the injunction, of course, I have an extra copy and we'll comply with that order but I'm not taking any steps that, in any way, recognize that Mr. Rancourt is a defendant in this action any longer but there is one thing we need to deal with, Your Honour, that his presence is required for and that is what I submit is his contempt of court with respect to all the R exhibits and in particular, that he downloaded the *voir dire* documentation and the litigation by proxy litigation, both - it's all *voir dire*. The jury was still sitting. I gave him a notice - a letter to immediately take those down from archive.org and we've just checked on the Internet now at noon or a quarter to noon and they're still up there. It's just a total in the Court's face, in Professor Joanne St. Lewis' face, attempt to prejudice the jury and it - I would request that the Court ask or require Mr. Rancourt to show cause why he should not be cited in contempt for what he did as reflected in the R exhibits that involved him and in particular, the downloading of the *voir dire* evidence and submissions where he's made statements about the Court, that you're biased and other potentially very prejudicial statements and just absolutely ignored the letter that I sent him to take down the *voir dire* documentation in those two proceedings. So, I recommend to Mr. Rancourt, as I did at

the outset of this libel action three years ago, that he get a lawyer but I'm asking the Court to order Mr. Rancourt to show cause why he should not be cited in contempt of court for what he did while this jury was still sitting.

THE COURT: Well, I think we won't proceed with that one right away. We can proceed with the injunction and so on but the problem, I think that in any situation, obviously, he was notified. I understand that. I'm aware of all of the R exhibits. It's unfortunate, to a certain extent, maybe - I think the Court is being overly indulgent but I think I want to give him a little bit of time to show cause and...

MR. DEARDEN: Oh, yes, Your Honour, I'm not suggesting now. I'm just making the request now...

THE COURT: Oh, okay.

MR. DEARDEN: ...'cause I think that if Mr. Rancourt is really being thoughtful, he better get a lawyer, a criminal lawyer to defend himself...

THE COURT: Yeah.

MR. DEARDEN: ...and so, I'm absolutely not suggesting that proceed now. I'm just putting it on the record that we're asking the Court to compel Mr. Rancourt to show cause why he shouldn't be cited in contempt for what he's done.

THE COURT: Yeah, I'm prepared to make that

Submissions by Mr. Rancourt

5 order, Mr. Rancourt, on the basis of all of
the R exhibits that have been filed, which
indicates at least very - substantially the
contempt, which which you have dealt with
this matter and tell us the Court - tell us
the jury. So, the consequences of a finding
of contempt is a serious one. It entails -
it can very well entail a jail term. So, you
should get a lawyer and we will fix a time
and a date to hear you and you should have
10 somebody representing you to convince - to
show cause why you should not be held in
contempt. So, we'll fix a date a little
later on here today as to when we can do
that. It.... But the order is made. You
have to - at a date that we will fix there,
you'll have to show up and I will recommend,
as I say, that you show up with a lawyer.
Okay.

20 DENIS RANCOURT : Monsieur le juge, moi aussi
j'ai des points préliminaires. Monsieur
Dearden vient de faire deux points
préliminaires et moi aussi j'en ai deux
points préliminaires à faire.

25 INTERPRETER: Your Honour, I also have
preliminary matters. Mr. Dearden just made
two preliminary points. I also have two to
make.

30 SUBMISSIONS BY MR. RANCOURT:

DENIS RANCOURT : Le premier est que c'est,

5 c'est la question sérieuse qui revient, la
question de, de apparence de partialité parce
qu'il y a des nouveaux événements qui
viennent de survenir alors, je veux les - je
pense que j'ai un devoir de le, de le
soulever - de, de le soulever. Le 3 mai
10 2014, pendant qu'on était en cour, vous avez
fait des énoncés dans lequel vous m'avez nié
ce que vous avez appelé la courtoisie, qu'on
communique avec moi pour me dire quand le
jury allait revenir et quel était le statut
du jury. Alors, je, je, je considère que ça,
c'est, c'est un événement qui - que j'amène
en, en, en appui à une demande que vous vous
recuisiez pour crainte raisonnable de
15 partialité et...

INTERPRETER: The first being is the serious
question that returns or arises from the
appearance of bias because events have just
transpired so I have an obligation to point
20 that out, the apprehension of bias from the
Court. The 3rd of May, 2014, while we were in
court, you made statements, sir, that you
denied what the -denied me the courtesy that
I be communicated with when the jury was
25 going to be rend during its verdict and where
the jury was at. So, consider that that is
an event that I will be bringing forward in
support of a recusal motion for reasonable
apprehension of bias on your part.

30 LE TRIBUNAL : Monsieur Rancourt...

INTERPRETER: *Monsieur Rancourt...*

DENIS RANCOURT : ...un autre...

LE TRIBUNAL : Monsieur Rancourt, c'est un petit peu tard pour ça, mais de toute façon...

INTERPRETER: *Monsieur* Rancourt, it's kind of late in the day for that now but in any way...

DENIS RANCOURT : Oui.

LE TRIBUNAL : ...vous avez demandé ce matin qu'on vous donne une demi-heure. Tout le monde vous a attendu pour que - pour le verdict. Je pense que c'était une courtoisie probablement excessive, mais on vous l'a donnée encore. Ça fait que c'est un peu de la manipulation pour vous de tenter de ramener ça sur le tapis là.

INTERPRETER: ...you asked to be given half an hour. Everybody asked for the verdict. Everybody - you asked - we gave you that courtesy. So, you asked for half an hour before the verdict was handed down. It's, it's a bit a manipulation on your part to try and bring this back on the carpet.

DENIS RANCOURT : Oui, il y a eu, Monsieur le juge, un énoncé en cour le 3 mai qu'on me - qu'on - que vous ordonniez qu'on me donnait pas cette courtoisie-là. Je fais appel à cet événement-là pour appuyer ma demande...

INTERPRETER: Your Honour, this was a statement on the 3rd of May that you ordered that I not be granted the courtesy and I

refer to that event...

LE TRIBUNAL : Non, non. Non, non.

INTERPRETER: All right, all right.

DENIS RANCOURT : ...que vous vous recuisiez.

LE TRIBUNAL : J'ai compris.

INTERPRETER: I understood what you said.

DENIS RANCOURT : Et le deuxième élément que -auquel je fais appel est le suivant, Monsieur le juge, je fais appel au fait que vous - hier, je suis venu pour accéder aux documents du procès avec Monsieur le registraire et j'ai, j'ai demandé de voir des documents et vous avez - Monsieur le registraire a communiqué avec vous. Il vous a fait, fait un ordre que je ne pouvais même pas consulter les documents qui étaient des documents du procès pendant que j'étais là en cour, sans même les sortir de la cour et que la seule façon que je pouvais les copier, si j'ai bien compris ce que Monsieur le registraire m'a communiquer, c'était de faire une demande officielle au, au, au, au bureau du registraire en bas, ce qui nécessairement voudrait dire que ça, ça prendrait plusieurs jours avant d'avoir accès à ces documents-là et donc, j'estime que ce sont des événements qui m'ont frustrés dans ma défense et dans ma possibilité de continuer aujourd'hui, comme on fait, donc, je cite ces décisions-là comme étant des événements en appui à une nouvelle demande que vous vous recuisiez pour crainte raisonnable de partialité. Alors, je pense

que j'avais le devoir de mettre ces points-là sur le procès verbal. Alors, je, je l'ai fait et donc, je, je, je vous demande de vous recuisez. Ça, c'est mon...

INTERPRETER: And the second element to which I can on, Your Honour, is the - I point out the fact that yesterday, I came to access documents from the trial with the Registrar. I asked to see documents and you - Mr. - the Registrar told me and communicated with you that I could not even consult the documents, the trial documents while I was here yesterday in court without even leaving the courtroom with them and that the only way I could access them, if I understood correctly, is that - that was communicated by the Registrar is that for me to make an official request for access downstairs, at the counter, which necessarily would have meant that it would take several days before accessing those documents. Therefore, in my estimation, those are events that frustrated me in my defence and in my possibility of conducting today, as we are getting ready, so I point to those two decisions in support of a new request for you to be recused or to recuse yourself for a reasonable apprehension of bias. I had an obligation to put those on the record. I've done so and I'm now asking you to recuse yourself.

LE TRIBUNAL : La demande est rejetée.

INTERPRETER: Rejected, sir.

32.
Submissions by Mr. Rancourt

DENIS RANCOURT : Okay. Et mon, mon...

MR. DEARDEN: Okay, just before you
continue...

DENIS RANCOURT : ...deuxième point...

MR. DEARDEN: Your Honour...

THE COURT: Yes?

DENIS RANCOURT : Mais j'ai pas, j'ai pas
fini, Monsieur le juge.

INTERPRETER: I'm not finished. I'm not
finished.

MR. DEARDEN: No, but...

THE COURT: On that point?

DENIS RANCOURT : Mais vous permettez à
monsieur Dearden de m'interrompe.

MR. DEARDEN: Yeah.

DENIS RANCOURT : Je l'ai pas interrompu.

INTERPRETER: I would ask you that Mr.
Dearden not interrupt me.

MR. DEARDEN: Yeah, on that point.

THE COURT: Okay, on that motion, just a
minute.

LE TRIBUNAL : Juste sur cette motion que
vous avez fait, oui.

INTERPRETER: On your motions.

MR. DEARDEN: I'm assuming that he was done
with
what he was saying about having you recuse
yourself, 'cause I wanna put something on the
record...

LE TRIBUNAL : Et sur ce point-là seulement,
oui.

INTERPRETER: On only the recusal point.

MR. DEARDEN: ...on that point. If he's done? Which, yeah, he's sitting down, so I guess he is done. Your Honour...

DENIS RANCOURT : Bien, Monsieur le juge, juste pour spécifier, j'ai, j'ai fini parce que vous avez déjà fait l'ordre.

INTERPRETER: Well, Your Honour, just to precise, I ended because you've already made the order.

LE TRIBUNAL : Mm-hmm.

DENIS RANCOURT : Donc, évidemment...

INTERPRETER: So, obviously...

LE TRIBUNAL : Monsieur...

DENIS RANCOURT : ...la question...

LE TRIBUNAL : ...monsieur Dearden...

DENIS RANCOURT : ...la question est finie...

LE TRIBUNAL : ...veut mettre quelque chose sur le dossier. D'accord.

INTERPRETER: Well, Mr. Dearden wants to put something on the record. So....

MR. DEARDEN: Your Honour, firstly, what Mr. Rancourt is doing is trying to create a new record, which I object to. Secondly, he was this morning given the half hour. I was here ready to go. Everybody was ready to go. He wasn't here. The Court waited for him to come before the jury was called in to give its verdict, which happened. Notwithstanding in my position, he had no standing whatsoever to keep anybody waiting because he abandoned

Submissions by Mr. Rancourt

5 this trial on May 16th. Secondly, in terms of
the trial documents, the exhibits that had
been filed since Mr. Rancourt abandoned his
defence and his trial on May 16th, the jury
was - he mentioned some - he tried to get
copies yesterday. The jury was deliberating
yesterday. The jury has the original
exhibits. They're entitled to that. No
10 member of the public, not even counsel, can
get access to those exhibits once the jury is
deliberating and they were deliberating
yesterday. So, he voluntarily chose to leave
and not be here when those exhibits were
filed and to have them handed to him like we
did the first day, that's his problem. He
15 made that bed. He lives in it. Thank you,
Your Honour.

DENIS RANCOURT : Je vais répondre à ces
commentaires, Monsieur le juge.

INTERPRETER: I will answer...

20 LE TRIBUNAL : Et je pense qu'il est
important de dire aussi, monsieur Rancourt,
sur ça, que vous avez obtenu et plus lu les -
vous vouliez lire les directives puis vous
avez obtenu puis vous les avez lues là.

25 INTERPRETER: I think it's important to
state, *monsieur* Rancourt, also on that point,
that you obtained and read - you wanted to
read my charge and you got them and you read
them. All right?

30 DENIS RANCOURT : J'ai - et je - tout à fait,
il y avait plein de documents que je voulais

voir qui étaient ici. Ça été confirmé et que je n'ai pas eu la permission de voir parce que vous avez nié cette permission-là hier.

INTERPRETER: Yes, absolutely, there were many other documents that I wanted to hear [sic]. It was confirmed. I did not have permission because you denied that permission yesterday.

LE TRIBUNAL : D'accord. On continue à d'autre chose.

INTERPRETER: All right. All right, let's move on.

DENIS RANCOURT : Alors, ce que dit monsieur Dearden est faux, mais par contre, je veux - monsieur Dearden n'arrête pas de répéter quelque chose alors, je veux quand même répondre. Je n'ai jamais abandonné ma défense. Jamais. Jamais, je n'ai dit que j'abandonnais ma défense et à chaque fois que j'ai communiqué avec la Cour, j'ai dit que je n'abandonnais pas ma défense et ça, c'est très clair. C'est dans le record et en plus, il n'y a jamais eu un ordre de cette Cour que je n'étais plus un parti à cette cause.

Jamais. Je suis un parti à cette cause et les règles sont claires. Des conditions à travers lesquelles on peut exclure un parti de la cause où il perd son abandon - son, son privilège de recevoir les documents, les conditions qui sont décrites dans les règles, n'ont - ne sont pas satisfaites. Ma position est que je suis entièrement et que j'ai

5 toujours été un parti à cette cause et qu'il
y a un devoir de me traiter comme un parti à
cette cause. Donc, je m'oppose que monsieur
Dearden continuellement répète sa position
comme si c'était la vérité. Il y a tout un
record qui montre le contraire. Je voulais
simplement dire ça parce que c'est quand même
important et étant donné que je suis un parti
à cette cause, qu'il n'y a pas eu d'ordre que
je n'étais plus un parti et qu'il n'y a pas
eu de trouvaille ou de jugement à cet effet-
là, je - j'insiste pour avoir tous les
documents maintenant que monsieur Dearden a,
a, a mentionné par rapport à cette motion que
nous allons argumenter prochainement. Alors,
je demande à la Cour de dire à monsieur
Dearden que je devrais recevoir tous les
documents qui sont pertinents à cette motion
et à tout ce qui va suivre dans cette
20 action...

INTERPRETER: However, I want to - Mr.
Dearden keeps repeating so, I want to reply
to it. I never abandoned my defence. Never.
Never, never did I say that I was abandoning
my defence and each time that I communicated
to the Court, I indicated that I was not
abandoning my defence. It's very clear.
It's in the record and furthermore, there was
never an order from this Court that I was no
longer a party in this matter. Never. I am
30 a party to this matter and the rules are

5 clear. The conditions, by which one could be
excluded of - where a party loses the
privilege of receiving documents, the
conditions that are described in the rules
have not been satisfied and my position is
that I am entirely and I've always been a
party in this matter and that there is a duty
to, to - for me to be treated like a party.
10 So, I oppose that Mr. Dearden continuously
repeat his position as if it were the whole
truth. There is a record that shows the
opposite. I simply wanted to state that
because it's still important, quite important
and also, given that I am a party to this
matter, that there was no order making me no
15 longer a party and that there was no judgment
to that effect, I insist to have all the
documents now, now that Mr. Dearden has
mentioned in relation to this motion that
we're going to argue shortly. So, I ask the
20 Court to tell Mr. Dearden that I am to
receive all the documents that are pertinent
to this motion and anything that will come to
follow.

25 LE TRIBUNAL : Oui, vous avez eu...

DENIS RANCOURT : ...pendant que nous sommes
en procès.

INTERPRETER: ...because we are in - at
trial.

30 LE TRIBUNAL : Vous avez eu son mémoire et
puis la liste de ces causes. Okay.

INTERPRETER: You received his brief and the

list of his case - his authorities.

DENIS RANCOURT : Non, il vient...

INTERPRETER: No.

LE TRIBUNAL : Concernant l'injonction?

DENIS RANCOURT : Monsieur Dearden vient de dire qu'il a préparé un *compendium*...

INTERPRETER: Mr. Dearden indicated that he prepared a compendium...

LE TRIBUNAL : Ah.

DENIS RANCOURT : ...*of argument* que je n'ai pas devant moi et qu'il ne m'a pas donné et qu'il refuse de me donner et je demande à la Cour de le recevoir puisque c'est cette motion même que nous allons argumenter maintenant. Je demande ça à la Cour en ce moment.

INTERPRETER: ...*of argument*. I do not have it. He refuses to give it to me and I'm asking the Court to receive it because this is the very motion that we are going to argue. I'm asking you this now.

LE TRIBUNAL : Est-ce...

MR. DEARDEN: Your Honour, I haven't even handed out the compendium yet, 'cause we haven't started the argument yet and as I said, if you order me to give him the compendium, we have made a copy to give to him.

THE COURT: Okay.

DENIS RANCOURT : Et c'est pour ça que je demande que vous ordonniez exactement ça, Monsieur le juge, parce que monsieur Dearden

a dit explicitement qu'il refuse de me le donner à moins d'une ordre de votre part. Je demande cette ordre-là. C'est très simple.

INTERPRETER: And that's why I'm asking you to order that precisely because Mr. Dearden has explicitly said that he refuses to give it to me unless the Court orders so and I'm asking you the order.

LE TRIBUNAL : Purement, par courtoisie puis pour - on va - je vais demander à monsieur Dearden de vous transférer une copie, oui.

INTERPRETER: Well, purely by courtesy, I'm going to ask Mr. Dearden to give you a copy.

DENIS RANCOURT : Merci, Monsieur le juge.

Donc, j'ai dit que j'avais deux...

INTERPRETER: Thank you, Your Honour. So...

LE TRIBUNAL : Et non parce que vous y avez nécessairement droit. Okay?

INTERPRETER: And not because you necessarily have a right to it. Do you understand that?

DENIS RANCOURT : J'ai dit que j'avais deux points que je voulais amener avant de commencer la motion. Donc, on a...

INTERPRETER: I said that there were points - two points that I wanted to raise before the motion.

LE TRIBUNAL : Allez-y, mais faite ça vite.

INTERPRETER: Go ahead but be quick.

DENIS RANCOURT : ...on a, on a parlé de, de la motion pour recuser. Mon deuxième point est le suivant : j'ai ici le *factum* de

5 monsieur Dearden, que j'ai obtenu parce que
je l'ai demandé et dans ce *factum*, il y a
aucune mention de - des ordres que monsieur
Dearden demande. Il n'y a pas de mention de
ce que monsieur Dearden va demander dans sa
motion. Il y a donc, donc...

10 INTERPRETER: So, we spoke about the recusal
motion and the second point I have is, I have
here Mr. Dearden's *factum*, that I obtained
because I asked for it and in this *factum*,
there are - is no mention of the orders that
Mr. Dearden is seeking. There is no mention
of what Mr. Dearden has [*sic*] seeking in the
motion. He...

15 LE TRIBUNAL : Les...

DENIS RANCOURT : J'ai...

LE TRIBUNAL : Ce qu'il demande, c'est...

DENIS RANCOURT : Je...

20 LE TRIBUNAL : ...dans la déclaration puis
ça, vous l'avez depuis la journée numéro un.

INTERPRETER: What he's asking, what he's
asking is in the claim and that, you had it
from day one.

25 DENIS RANCOURT : Il, il n'est pas clair que
il demande uniquement ce qu'il y a dans la
déclaration.

INTERPRETER: It's not clear that he's
uniquely asking or seeking what's the claim.

30 LE TRIBUNAL : Mais on va le savoir lorsqu'il
va parler. Okay.

INTERPRETER: Well, we're gonna find out when
he'll be able to speak.

DENIS RANCOURT : Mon point est...

LE TRIBUNAL : Prochain point?

INTERPRETER: Next point?

DENIS RANCOURT : Mon point est que je ne le
sais pas et que je ne le sais pas jusqu'à cet
instant...

INTERPRETER: Well, my point is, is that I
don't know and I still don't know.

DENIS RANCOURT : ...ce qu'il va demander
et...

LE TRIBUNAL : Prochain point?

INTERPRETER: Next point, sir?

LE TRIBUNAL : Prochain point?

INTERPRETER: Next point, sir?

DENIS RANCOURT : ...donc, j'appelle ça une
embuscade. Je...

INTERPRETER: And this is an ambush.

LE TRIBUNAL : Prochain point?

INTERPRETER: Next point, sir?

DENIS RANCOURT : Vous me forcez à, à être
prêt pour une motion...

INTERPRETER: You are forcing me...

LE TRIBUNAL : Prochain point, monsieur
Rancourt?

INTERPRETER: Next point, *monsieur* Rancourt?

DENIS RANCOURT : Je suis en train
d'expliquer mon...

INTERPRETER: I'm explaining, Your Honour.

LE TRIBUNAL : Oui, j'ai compris.

INTERPRETER: Yes, I've understood.

DENIS RANCOURT : ...mon point.

LE TRIBUNAL : J'ai compris...

DENIS RANCOURT : Mon...

LE TRIBUNAL : ...votre point.

INTERPRETER: I've understood your point.

DENIS RANCOURT : Mon...

LE TRIBUNAL : C'est quoi votre deuxième point?

INTERPRETER: What's your second point?

DENIS RANCOURT : Mon point est que on m'oblige à défendre une motion où je ne sais pas, à l'instant, ce qui va être demandé dans cette motion-là.

INTERPRETER: My point is I'm being obligated to defend a motion where I do not know, currently, what is being sought in that motion.

LE TRIBUNAL : Prochain point?

INTERPRETER: Next point, sir?

DENIS RANCOURT : Et donc, je, je - c'est pour ça que je demande ce que je demande est la chose suivante : je demande que monsieur Dearden communique clairement, et à la Cour et à moi, ce qu'il va demander dans cette motion et les ordres qu'il va demander et que à partir de ça, j'ai le temps de préparer la motion et donc, je demande un ajournement raisonnable, suite à avoir été informé de ce que monsieur Dearden va demander dans la motion comme ordre.

INTERPRETER: So, that is why I am asking - why I'm seeking - I'm asking that Mr. Dearden

communicate clearly, and to the Court and to myself, what he's seeking in this motion, the orders he's seeking and from that, I have time to prepare my defence of the motion.

So, I'm asking for a reasonable adjournment subsequent to having been advised of what Mr. Dearden is seeking in his motion.

LE TRIBUNAL : Prochain point?

INTERPRETER: Next point?

DENIS RANCOURT : C'est ça mon point, Monsieur le juge.

INTERPRETER: That's my point.

LE TRIBUNAL : Ah, vous n'avez pas d'autres?

INTERPRETER: You don't have another one?

DENIS RANCOURT : C'est mon...

LE TRIBUNAL : On peut commencer avec - on va entendre donc monsieur...

INTERPRETER: So, we can start.

DENIS RANCOURT : Mais, j'ai, j'ai, j'ai fait une demande là, Monsieur le juge. Je vous demande...

INTERPRETER: But that's my point but I've made a request, Your Honour. I am asking you...

LE TRIBUNAL : Oui, c'est ça.

DENIS RANCOURT : ...de donner un ajournement...

LE TRIBUNAL : C'est au dossier. C'est au dossier et je dis qu'on procède maintenant avec cette demande d'injonction.

INTERPRETER: It's on the record. It's on

the record and I'm saying that we're going to proceed with Mr. Dearden's request for an injunction, application for an injunction.

THE COURT: Yes?

MR. DEARDEN: Just before I do proceed, Your Honour, a couple of times Mr. Rancourt has mentioned that he made a request to the Court for copies of exhibits. I just want the record to reflect that I'm completely unaware of what he's talking about, if he communicated by email or however he communicated, I'm unaware of what he's talking about. He never cc'd me...

THE COURT: Well, he came here yesterday and he spoke to the Registrar while he had - we were waiting for the jury and he said, I want to see this and that. That's what happened and the Registrar called me. I said, "You can leave - let him read the..." Apparently, it was important to him to read the charge and I let him read the charge and I told him that other documents, as far as I was concerned, he could get copies of, if they were available as any member of the public.

MR. DEARDEN: Yes. And none of what he's referring to is exhibits that he wanted to make copies of, are gonna relate to - I'm not gonna be referring to any of that evidence in why I want the permanent injunction. So, if I may proceed, Your Honour?

SUBMISSIONS BY MR. DEARDEN:

MR. DEARDEN: We have a compendium of argument that I'll hand up to the Court.

DENIS RANCOURT : Monsieur le juge, est-ce que je peux avoir quelques instants pour étudier ce *compendium* que je viens de recevoir?

INTERPRETER: Your Honour, if I can have a few moments to go over this compendium that's just been handed to me?

MR. DEARDEN: I will be going through each tab, Your Honour. There is no need for yet another request by this defendant to try to adjourn and a former defendant to try to adjourn and delay things, which he is so apt to doing. Every motion, we've had a request for an adjournment from this individual.

THE COURT: Yeah.

LE TRIBUNAL : Y'a rien. Je viens de passer à travers. Y'a rien de nouveau là-dedans, monsieur Rancourt. Quelques arrêts que - dont vous aviez la liste puis les autres choses sont des choses que vous êtes au courant. Donc - d'accord.

INTERPRETER: I've just gone through them. There's nothing new in this, *monsieur* Rancourt. There are a few decisions for which you had the list and the other points are things you are aware of. All right. So, let's go ahead.

5 MR. DEARDEN: So, Your Honour, in paragraph one of the Statement of Claim, which was issued three years ago, Professor St. Lewis seeks in paragraph 1(d), a permanent injunction to restrain the defendant from any further publication of the defamatory statements complained of in this Statement of Claim.

10 THE COURT: Just hold on. You want to give me back the record, please? Well, I can read at the same time the Statement of Claim. Yes. Sorry, sir, okay, go ahead.

15 MR. DEARDEN: So, that was 1(d) of the Statement of Claim, which Mr. Rancourt has had for over three years and I object to his characterization that he doesn't know what the injunction request is about. He clearly knows what the injunction request was about. So, the paragraph 1(d) seeks a permanent
20 injunction to restrain the defendant from any further publication of the defamatory statements complained of in this Statement of Claim. Paragraph 1(e) requests an order requiring the defendant to permanently remove
25 or take down the defamatory statements complained of in the Statement of Claim from any electronic database where they are accessible and paragraph 1(f), an order requiring the defendant to assist the
30 plaintiff in obtaining the removal or take down of the defamatory statements complained

of in the Statement of Claim from Internet search engine caches such as Google, any electronic database where the defamatory statements are accessible and other Internet websites operated by third parties. So, Your Honour, in - as an outline of my argument to obtain this relief, I have really two points of argument only. It's to take you to the text in libel cases where permanent injunctions are asked for and granted.

In the first - the first branch, you only need one of these branches but one branch of it, Your Honour, is the likelihood that the defendant will continue to publish defamatory statements about Professor St. Lewis and at - another completely separate ground, Your Honour, which I'll be addressing is that there would be a real possibility that Professor St. Lewis will not receive any compensation and I'll be pointing out to the Court on that point, that currently, he has outstanding cost orders of a quarter of a million dollars that have been issued against him in the past three years. I will deal with the evidence, specifically the R exhibits, to support my submissions that we need both branches. We only need to meet one of them but we need both branches to get the permanent and mandatory orders required and I have prepared a draft order of wording for the Court to consider. So, the first tab,

Your Honour, on the first branch, you'll find the Astley v. Verdun decision of Justice Chapnik and so, it's at Tab 1 and I'm asking Your Honour if you could turn to paragraph 20. Justice Chapnik, at paragraph 20, which is a 2011 decision, says, "It is well-settled law that, in appropriate circumstances, a court may grant an injunction to prevent a defendant from continuing to disseminate defamatory material that affects a plaintiff's reputation." And refers to the Court of Appeal's decision in *Barrick Gold*. Paragraph 21, "Permanent injunctions have consistently been ordered after findings of defamation where either (1) there is a likelihood that the defendant will continue to publish defamatory statements despite the finding that he is liable to the plaintiff for defamation; or (2) there is a real possibility that the plaintiff will not receive any compensation, given that enforcement against the defendant of any damage award may not be possible." And in this particular case, Your Honour, paragraph 25, the court holds, "I find it highly likely that the defendant will continue to publish defamatory statements about the plaintiff despite the finding that he is liable to the plaintiff for defamation, absent an injunction restraining him from doing so." And in paragraph 26, "Though unnecessary, I

note in passing that the second branch of the criteria for ordering a permanent injunction is also satisfied in this case. The defendant repeatedly stated during the proceedings that he is impecunious." And I draw your attention, Your Honour, to paragraphs 33 to 37 of the same decision. "Injunctive relief is an exceptional remedy that will not be imposed by the courts lightly. I certainly agree with the defendant when he states that any form of prior restraint on freedom of speech is extremely serious and can only be imposed in the clearest and rarest of cases. This, however, is one of those cases." Paragraph 34, "This is so given the plaintiff's high reputation and positions in the business community and the wide circulation of the defamatory statements calculated to destroy that reputation, as well as the strong likelihood that the publishing of defamatory statements against the plaintiff will continue and the real possibility that the plaintiff will not actually be compensated by the payment of damages." Paragraph 35, "Accordingly, I order a permanent injunction to issue against the defendant, Verdun, restraining him from disseminating, posting on the Internet or publishing, in any manner whatsoever, directly or indirectly, any statements or comments about the plaintiff,

Robert M. Astley, [that the] injunction shall include..." and I won't read that. Paragraph 36, "There will also be a mandatory injunction requiring the defendant to forthwith remove his blog postings...from the Internet, and any similar postings that refer to the plaintiff, directly or indirectly." Paragraph 37, "The plaintiff's motion is allowed. Orders to issue against the defendant as outlined above. In summary, for over six years and possibly more, Mr. Verdun has admittedly engaged in a campaign to discredit the plaintiff. The jury has spoken. It is time for this vitriolic campaign to end. He must also understand that the consequences for deliberately failing to comply with a court order or disobedience of such an order may lead to proceedings for contempt of court." And it's my - gonna be my...

DENIS RANCOURT : Excusez-moi, Monsieur le juge.

Juste une demande...

INTERPRETER: Excuse me, Your Honour.

MR. DEARDEN: No, no, please don't.

DENIS RANCOURT : ...très rapide? J'ai, j'ai pas une copie des autorités devant moi. Est-ce que je pourrais avoir une telle copie? C'est juste ça parce que je, je ne peux pas lire le contexte. Je ne peux pas suivre. Je, je n'ai pas les autorités...

5 INTERPRETER: I have a very quickly [sic] request. I don't have a copy of the authorities before me. Can I have that kind of copy? That's all. Because I can't read the context. I can't follow along. I don't have...

10 LE TRIBUNAL : Pourtant vous aviez deux jours pour en trouver une copie. Elle est sur CANLII cette décision-là.

INTERPRETER: Why? You had two days to find a copy. It's on CANLII that decision.

DENIS RANCOURT : Oui, et je l'ai...

LE TRIBUNAL : Non, non. Écoutez, c'est...

15 INTERPRETER: No, no. Listen...

DENIS RANCOURT : Ce matin, je, je suis venu à grande épouvante pour arriver à temps. Je savais pas si on allait m'accorder une demi-heure ou pas.

20 INTERPRETER: I came in a hurry to arrive on time. I didn't know if I was going to be granted half an hour or not.

LE TRIBUNAL : Oui, on prend...

DENIS RANCOURT : Et je n'ai pas eu le temps...

25 LE TRIBUNAL : ...pas de chance. Non, non, vous aviez deux jours. Je vous ai dit qu'on était pour procéder puis là, vous - ça, c'est inque des mesures encore pour retarder le tout là.

30 INTERPRETER: No, no, you don't take a chance. No, no, you had two days. I told

you we were going to proceed. This - these are just tactics to delay.

DENIS RANCOURT : Non, Monsieur le juge.

INTERPRETER: No, Your Honour.

LE TRIBUNAL : Donc, on continue.

INTERPRETER: Let's continue.

MR. DEARDEN: But for the record, Your Honour, because this defendant - this individual, he will rip out of context whatever anybody says and he's done it consistently the past three years.

DENIS RANCOURT : Objection.

INTERPRETER: Objection.

MR. DEARDEN: Over two years ago...

DENIS RANCOURT : Y'a - c'est, c'est absolument pas mérité...

MR. DEARDEN: ...and he yet...

DENIS RANCOURT : ...de dire ce que monsieur Dearden vient de dire.

INTERPRETER: It's not absolutely unwarranted.

LE TRIBUNAL : Vous laissez monsieur - vous répondrez plus tard. Vous répondrez - prenez des notes puis répondez au lieu. Okay?

INTERPRETER: Let Mr. Dearden - you will reply. Take notes and you will reply instead. All right?

MR. DEARDEN: So, Your Honour, two days ago, at least, when we were dealing with the factum on injunction when you had me provide a copy to Mr. Rancourt, it was pointed out to

him that there's a Table of Authorities in the back of this factum, which is all I'm referring to and all I'm referring to is the paragraphs that he has in front of him. This is not a complex matter at all, as he suggested earlier. The test is right there. It's real simple. It's evidentiary and I'm relying on as our exhibits, which he is fully aware of. So, that's the test, Your Honour. It's either branch. I submit we have both branches here but the next case is Warman v. Fournier, a decision of Justice Smith. In paragraph 34, at Tab 2 of the compendium, Justice Smith found that there should be an injunction granted because without it, the libel was gonna continue and he made the interesting point in the middle of paragraph 34, "...that the proposed injunction would not prevent any of the defendants from engaging in political comment that was not defamatory, whereas the harm to Mr. Warman's reputation would be substantial." And that's exactly all that we're requesting is to stop the defamatory statements. If Mr. Rancourt could only learn to write things without defaming people, he wouldn't be in the predicament that he finds himself today but I thought that was a very interesting point made by Justice Smith, that he's not preventing any political comment that's not defamatory. What we're talking about is an

injunctive relief regarding defamatory statements and future defamatory statements by this individual, Mr. Rancourt. So, that was granted. The permanent injunction was granted by Justice Smith to the plaintiff, Mr. Warman, in that case and the same, Your Honour, in the next case, which is B.C. Supreme Court decision of Justice Halfyard, found at Tab 3. It's Griffin v. Sullivan and I draw your attention to paragraph 119, which is the part of the decision that deals with the claim for injunctive relief. In this case, the - Justice Halfyard said, in the judge's..., "...opinion, a permanent injunction is not only justified but required in this case." And I submit to you, the exact same circumstances exist here. It's not only justified but it is required with Mr. Rancourt. "In light of his conduct over the past three and one-half years, it cannot be assumed that Mr. Sullivan will cease all efforts to publish new defamatory material or re-publish old defamatory material, about Mr. Griffin. Nor can Mr. Sullivan be trusted to make every possible effort to remove defamatory material about the plaintiff which he is responsible for publishing, and which still remains on the internet by his own admission." And then the order, Your Honour, is found in paragraphs 1-21 and 1-23. So, the defendant's ordered, "...by himself, his

agents, his servants or otherwise be restrained from publishing, or causing to be published, on the internet or by any other method or medium, any defamatory statement referring in any way to the plaintiff, whether by name, pseudonym, address, photograph or other means of identity. The order will prohibit the defendant from publishing or causing to be published any such statement in his own name, in the name of any nicknames, pseudonyms, or aliases that he now uses, has used, or may use in the future. The defendant is further prohibited from publishing or causing to be published any such statement about the plaintiff, anonymously, or in the name of another person. It is my intent that the order will prohibit Mr. Sullivan from using the device or technique of "anonymous re-mailing" to publish or republish any defamatory statement of or concerning the plaintiff. There will also be a mandatory injunction requiring the defendant to make all reasonable efforts to remove from the internet, the entirety of any and all of the internet postings that he has published or caused to be published, and which refer to "Robert Griffin" "Griffin," "Magnus Pym," "Pym" or "Pymmy" within 60 days of today's date. The injunction will also include a term that the defendant be restrained from contacting or communicating

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with the plaintiff, directly or indirectly in any way or by any method. In ordering this term (which is broader than the term requested in the statement of claim) I rely on the evidence presented and on the inherent jurisdiction of this court." And I am also going to be making a similar request for such a term with respect to Professor St. Lewis, Justice Charbonneau, is that the defendant be restrained from contacting or communicating with Professor St. Lewis directly or directly [sic] in any way or by any method and...

15
DENIS RANCOURT : Donc, vous voyez que monsieur Dearden fait des demandes qui ne sont pas ni dans son *factum*, ni dans son *compendium of argument* et...

INTERPRETER: So, you see, his requests are neither in his *factum* nor his *factum*...

20
LE TRIBUNAL : Vous répondrez après qu'il aura fini. Merci.

INTERPRETER: You will reply once he'll be done.

25
30
MR. DEARDEN: Your Honour, can I request that if Mr. Rancourt interrupts my argument again, I think it's the fourth time now that you've told him to stop interrupting, that you ask him to leave the courtroom because this is just - it's just so unnecessary for him to do that. He's been told, make a note and make your response and he refuses to respect the

Court. That's what it is. It's disrespect for the Court and it's beyond that for counsel but that's another movie. The next tab, Your Honour, at Tab 4, is a decision of Justice Smith in the Vigna v. Ezra Levant decision where at paragraph 1-42, Justice Smith - we didn't see any reasons given but he grants the order against Levant at paragraph 1-42 to remove all the defamatory blogs referring to Vigna from his website within 15 days. That's at Tab 4 of the compendium, just a simple disposition that there be a take down order within 15 days and Justice Morin, is one of the I think earliest judges to grant an injunction in a libel case involving the Internet and that's at Tab 5, Your Honour, the Ottawa Carleton District School Board v. Scharf and others and at paragraph 30(b), "An interim and permanent injunction preventing the defendants from republishing defamatory statements about the plaintiffs on any website or in any other medium or otherwise communicating or publishing false and defamatory statements about the plaintiffs." was ordered against the defendants in that case. So, that's the law, Your Honour. It's nothing complex about it at all. It's a question of whether you've got the evidence to meet either the first or second branches of the test to issue a permanent injunction and mandatory take down

orders. I'll deal first, Your Honour, with the first branch, which is the likelihood that the defendant will continue to publish defamatory statements despite the finding that he is liable to the plaintiff for \$350,000 in damages, according to the jury's verdict today. You note that one of the cases I refer to, Your Honour, spoke of a factor being the extended, that the defendant extended the scope of his publications after the commencement of the action and of course, the evidence at trial, the three-year cyberbully campaign, we had introduced as exhibits, Your Honour, Volumes 2A, 2B and 2C of Professor St. Lewis' Trial Book of Documents, which is Exhibits 5, 6 and 7 of this trial and has samples of his efforts to extend the scope of his publications but I've also specifically put in the compendium his solicitations of the mainstream media and student media at Tab 7. So, you'll recall at trial, Your Honour, the emails that Mr. Rancourt sent out in June of 2011. So, within a couple of days of the Statement of Claim being issued, he sends to the student news editors that what you see at the email at Tab 7 of the compendium, "Dear student news editors, Please consider following this one million lawsuit against a professor of the blog post story. Some are issued back to school news cap. The MSM...", which is Mainstream Media, "...have found it

newsworthy." And then, I've also, at that Tab 7, Your Honour, included his blast emails to over a hundred reporters and two student media in July when his Statement of Defence was posted and he made sure that all of these people knew about the allegations he was making about Professor St. Lewis in his Statement of Defence, some of which included that she was fraudulent and other nasty malicious statements that he has in that Statement of Defence but - so, that's one example, Your Honour, that you can look to, to see if he's likely to continue publishing defamatory statements. Another one is at Tab 6 of the compendium. This is - you'll recall, Your Honour, the publication in June of 2001, U of O Watch, written by Mr. Rancourt where he allowed - he approved - he screened, he approved and he published the 14 comments that we see on this June 23rd, 2011 publication and I haven't reproduced them all there, Your Honour, but I reproduced English Works piece of work in terms of the viciousness of the attacks on Professor St. Lewis that Mr. Rancourt allowed to be published on his website, the Baa Baa Black Sheep Shot and the other - I mean it's - I just still find this mind boggling that he would allow that to be published and it's still up there today. He refuses to take those down. You'll recall, Your Honour, that

at Tab 9 and specifically, I entered as an exhibit a notice of libel and take down on July 5th, 2012 where I'm notifying you, "...to immediately take down the false and defamatory statement you published on July 2nd that was sent to you from English Works, which was in response to an article allegedly providing an update of your champerty motion, specifically, take down the false and the defamatory statement 'What an example to all the cowardly service driven intellectuals only concerned with feathering their nest.'" And he never took that down. That's just some of the publications that Mr. Rancourt is more than well aware of because he allowed them or wrote them but now, they are exhibits, Your Honour. I submit that the R exhibits that almost all of them involve Mr. Rancourt directly, prove that he will ignore the jury's verdict; that he will continue to defame Professor St. Lewis under the guise that the system of justice in this courtroom is biased; under the guise that he is a victim and martyr. That's what - that's his - that's the campaign that he's been on with what we've seen since he abandoned his defence on May the 16th. It's contemptuous but that's for another day to - for him to show cause why he shouldn't be cited for contempt but for the purposes of the permanent injunction, this is overwhelming

evidence of his intention to not stop defaming Professor St. Lewis unless there's a permanent injunction. The first example I'll take you to, Your Honour, would be Tab 15 of the compendium. This is my letter of May 29th, 2014 to Mr. Rancourt to take down the *voir dire* documentation that was filed in the litigation by proxy matter and to take down the *voir dire* documentation that was in issue in his motion to have you recuse yourself for reasonable apprehension bias. As I told you not so long ago, Your Honour, notwithstanding that at paragraph 5, I've stated to Mr. Rancourt, "These are additional and intentional attempts by you to prejudice the jury in this trial, which you abandoned the morning of May 16. Notwithstanding that you abandoned your defence in this libel actions, all persons are prohibited from publishing any information that is filed during the *voir dire* in a jury trial. Your conduct since you abandoned your defence in this trial has been contemptuous and will be addressed after the jury verdict is returned." Paragraph 6, "I am demanding that you immediately remove all *voir dire* documents you have published on archive.org to mitigate the prejudice to the jury that you are intentionally attempting to cause." And we did the search about 30 minutes ago, Your Honour, in this courtroom to see if he's taken down these *voir dire*

5 materials and he has not. The next tab, Your Honour, Tab 14 of the compendium, Exhibit R11, Mr. Rancourt, knowing that the jury was still sitting, publishes on May 17, so the day after he walked out of the trial, he publishes an English version of the French statement that he made to the Court around 10:05 a.m. on May 16th, "Why I walked out of the trial in which I am being sued." He talks of...

DENIS RANCOURT : Je pense pas que c'est l'onglet 14.

INTERPRETER: I don't think it's Tab 14.

MR. DEARDEN: Eleven?

MS. SEMENOVA: Yeah.

MR. DEARDEN: Yeah. And 14, while we're on it, yeah, actually, I might have got that confused. R11 is probably Tab 14. So, let me go back to that. If you could turn to Tab 14, Your Honour, that is our 11. It is activist teacher website, Mr. Rancourt's activist teacher website, "The crisis of access to justice in self-represented litigants, as I see it." In that, Your Honour, you will see on the second page, while we have it up, he starts on the first page at the bottom saying, "In a single case of alleged defamation for words on a blog, I've been required to go before 17 different judges at all courts, up to the Supreme Court of Canada, in over 30 open court hearings,

over more than three years, in the motions, appeals of motions and case conferences in the action against me. I've prepared thousands of pages of legal documents and I've been ordered to pay legal costs of the suing party of more than one quarter of a million dollars to date, prior to the trial that is now ongoing." And then he - on page 3 of 13, Your Honour, if you look at the second bullet at the top of that activist teacher article that Mr. Rancourt wrote May 25th while the jury was still sitting, "Orders that I pay outrageously high cost, which in effect, punish me for trying to defend myself, despite the fact that I have no money." And what is, in my submission, Your Honour, quite telling about the attitude of Mr. Rancourt, he goes into the blatant conflict of interest, as he describes it, of Justice Beaudoin and this is so offensive but he keeps repeating it and he says, at the last paragraph on page 3 of 13, "The whole bias episode involving 13 judges from three courts shows the degree in which the entire judicial structure will tolerate a judge's apparent bias at least when the bias complaint is brought by a self-represented litigant being sued by prominent members of the legal establishment." And on the next page, he says in the first full paragraph, "All of this has only been repeated at the

trial itself, which started on May 12th, 2014, which is ongoing. Prior to trial, I asked then Regional Senior Justice Charles Hackland, who resigned on May 8th, 2014..." and that's a link to his defamatory article about Regional Senior Justice Hackland, "...to name a case judge who had no connection with the University of Ottawa and I made a formal motion for the trial judge to recuse himself because of the judge shared interest with the University of Ottawa. None of this mattered and the trial judge refused to recuse himself. This, and the judge's in court actions led to my walking out of the trial, which was reported in the media." It was indeed reported in the media because Mr. Rancourt also described this court as a Kangaroo Court, which you'll find at R3 of the - or it's in R3 and it's compendium...

MS. SEMENOVA: Ten.

MR. DEARDEN: ...10. Compendium Tab 10, he gives an interview to the Citizen about why he walked out on the Kangaroo Court and I've highlighted or have side barred, Your Honour, on the second page of Tab 10 of the compendium, what he is quoted as saying, which is, "To strike out a pleading is a Draconian measure", Rancourt said, adding that the judge's ruling effectively gutted his defence strategy and created 'a fake process where I'm gagged.' That, to me, is absurd. It's insane,' he exclaimed. 'It's

the opposite of what should happen in a fair process. I'm not going to participate in that kind of kangaroo court.' Rancourt acknowledged that his absence will put the jury in a 'very difficult position' when it has to decide whether he defamed St. Lewis, who is claiming 1 million in damages. 'This poor jury is not going to hear the whole story.' But he said he would not reconsider his decision to withdraw from the trial. Asked what he will do if the jury finds in St. Lewis's favour, he replied: 'I haven't thought that far ahead.' So, Your Honour, it unfortunately continues. So, at Tab 12, you have Mr. Rancourt publishing on May 23rd, on his activist teacher website, it's, "Is it time for the tort of defamation to be abolished?" And he has a "Guilty Until Proven Innocent - the Tort of Defamation", a video, which we've put the transcript attached at the back of that at Tab number 12 of this compendium. This individual believes that he can defame anybody with impunity. He wants the tort of defamation abolished. That - he, if anything signals that he's going to continue defaming Professor St. Lewis in whatever article he's gonna write as a martyr or a victim of the jury's verdict, this is it unless a permanent injunction is issued and then he faces criminal consequences for breaching that injunction. He doesn't care

about the monetary consequences. He thumbs his nose at the cost orders for motions he's brought and lost all the way up to the Supreme Court of Canada. Now, we have Mr. Schmidt also, back in the act, Your Honour, as you know. That's at Tab 8. This is one of Mr. Rancourt's friends and supporters. Mr. Rancourt published just and defamatory articles and you'll see at Tab 8 is a notice that I sent him on November 22, 2011 to take down a defamatory publication of Jeff Schmidt that sarcastically pretended to be a campaign for the just treatment of Professor St. Lewis when it was anything but and tab - so, that was Tab 8. And, of course, this take down notice was ignored. U of O Watch still has the links to Jeff Schmidt's articles. Tab 16, we have Mr. Schmidt directly communicating with you, Your Honour. This is R22, where you're accused of now the university's apparently enlisted you in the process and we have another friend of Mr. Rancourt, Stephen Lendman, has published a contemptuous article at Tab 13. This one, "Activist Professor Denis Rancourt's Judicial Lynching.", published May 24, 2014 and he accuses you, amongst other things, Your Honour, of being the lynching judge. It's all part of the campaign, Your Honour, to bring the Court and bring the administration of justice into disrepute. We also - I don't have it in the compendium but there was

examples of Facebook contempt in R18 and R19 and Twitter contempt in R20, which are not in the book but all of this, Your Honour, in fact, there's a number of just single exhibits, which would be enough to support the conclusion that without a permanent injunction, this defendant - this - Mr. Rancourt is gonna continue to publish defamatory statements, despite the fact that a jury has awarded \$350,000 against him. Anybody that would show such contempt for the system, such disrespect for the judicial system and in such disrepute for the administration of justice, Your Honour, isn't going to stop. He's not gonna stop. He hasn't stopped his railing on Justice Beaudoin and with his cruellest and the lowest blows that could be imaginable in accusing him of reasonable apprehension of bias and he's not gonna stop on Professor St. Lewis unless a permanent injunction is granted. So, that's the evidence on the first branch, Your Honour. And the second branch of the test, which is a stand alone test is you can order it if there's no likelihood that Professor St. Lewis is going to get compensated and I just read to you at Tab 14, Your Honour, if you want to make a note, Tab 14 was R11 and that's where Mr. Rancourt pointed out that he owes 250,000 in cost and he pointed out, he says, he has no money. He doesn't say in there that - about

the first year into this litigation, he transferred his interest in his house - his 60 percent interest in his residential house to his spouse for one dollar and we estimate that to be valued around a hundred and \$50,000 because we put in - anyway. He doesn't mention those kind of facts. Our position, all along, has been that's a fraudulent conveyance to judgment proof himself but you don't need to worry about that part. It's just he's written that he owes 250,000 in cost and he has no money. That, according to the *Verdun* decision, is good enough to order a permanent injunction as well. And, Your Honour, I'm gonna hand up to you a draft order of wording and this is certainly isn't being presumptuous but the wording has been carefully crafted.

THE COURT: Give a copy to Mr...

DENIS RANCOURT : Merci, Monsieur le juge.

INTERPRETER: Thank you, Your Honour.

MR. DEARDEN: There's a draft would be, "The defendant is permanently restrained from publishing or causing to be published through the Internet or by any method of median of communication, either directly or indirectly, any of the statements the jury has found to be defamatory." Paragraph 2, "The defendant is permanently restrained from publishing or causing to be published through the Internet or by any other method or median of communication, either directly or indirectly,

any defamatory statement about the plaintiff." Paragraph 3, "The defendant is ordered to permanently remove, take down the defamatory articles entered as Exhibits 3 and number 4 and all other articles he has published about the plaintiff that include any of the statements the jury has found to be defamatory or that contain hyperlink to Exhibits 3 and 4. The defendant is ordered to permanently remove, take down these articles from any website or electronic database where they are accessible within 15 days of the date of this order." Paragraph 4, "The defendant is ordered to assist the plaintiff in obtaining the removal or take down of the statements the jury has found to be defamatory from Internet search engine caches such as Google, any electronic database where the defamatory statements are accessible and other websites operated by third parties." Paragraph 5, "In the event that the plaintiff believes the defendant is in breach of this order, in addition to any remedy that may be available, the plaintiff can apply for an order requiring any person or company within the jurisdiction of this court, who has notice of this order, to remove or take down the articles containing the statements the jury found to be defamatory or that contains a hyperlink to Exhibits 3 and 4. The plaintiff can also

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apply to expand or otherwise change the terms of this order on the ground that this order has failed or is failing to achieve one or more of its purposes." Paragraph 6, "The defendant is restrained from contacting or communicating with the plaintiff, directly or indirectly, in any way or by any method."

So, that's the proposed wording of the permanent and mandatory order, Your Honour, that we're seeking and subject to any questions, Your Honour, that's my submissions.

THE COURT: Thank you very much. It's almost a quarter to so, Mr. Rancourt, you're in luck because obviously, we'll - that will give you a bit of time. We're gonna resume at two o'clock and I'll hear your submissions.

LE TRIBUNAL : Je vais entendre vos représentations à deux heures.

INTERPRETER: I will hear your submissions at 2 p.m.

DENIS RANCOURT : Okay, Monsieur le juge. Je crois - je, je crois pas que c'est de la *luck*, Monsieur le juge, mais merci beaucoup.

INTERPRETER: Thank you, Your Honour. I, I don't think I - it's - I feel lucky but thank you anyhow.

LE TRIBUNAL : Merci.

(12:39 p.m.)

R E C E S S

U P O N R E S U M I N G :

(2:01 p.m.)

MR. DEARDEN: Your Honour, could I deal with a couple of housekeeping matters before Mr. Rancourt makes his submissions? On the cost, Your Honour, would it suit you if on or before June 25th, we got a cost outline and bill of cost to Your Honour?

THE COURT: Yes, that's fine. Send that to me and send a copy to Mr. Rancourt.

MR. DEARDEN: Okay.

THE COURT: He wants to answer, reply to it.

MR. DEARDEN: We will. And Your Honour, can I have your permission to have the original order that you signed today so that we can have it entered downstairs?

THE COURT: Did you prepare the order for the judge - you mean for the verdict?

MR. DEARDEN: Well, the one that you signed this morning that - yeah, that order.

THE COURT: I only endorse - oh. You mean a copy of the endorsement?

MR. DEARDEN: No, I have the endorsement but the original order needs to be entered.

THE COURT: Yes, have you provided me with a formal order on - I have the formal order relating to the - your draft for the clerk - for the injunction but I didn't...

MR. DEARDEN: No, the one that deals with the damages and the...

THE COURT: Oh, so, there...

MR. DEARDEN: ...pre and...

THE COURT: ...I didn't realize you had

provided - yes. Yes, I had signed this.
Yes.

MR. DEARDEN: That's the original.

THE COURT: Yes, I'm sorry. I'm - yeah, I forgot this. Yeah, that's your copy that you can enter, yes.

MR. DEARDEN: Okay and we'll try to do that this afternoon.

DENIS RANCOURT : Donc, Monsieur le juge, est-ce que je pourrais avoir une copie du *endorsement* et de l'ordre qu'on vient de donner à monsieur Dearden aussi?

INTERPRETER: So, Your Honour, could I also have a copy of the endorsement and the order that's being given to Mr. Dearden?

LE TRIBUNAL : Oui, Monsieur le greffier, vous pourrez donner une copie de l'inscription et de l'ordonnance à...

INTERPRETER: Yes, the Clerk, you will give a copy of the endorsement and the order to Mr. Rancourt.

DENIS RANCOURT : Et aussi, juste pour être clair, monsieur Dearden vient de obtenir la permission pour soumettre un *cost outline*. La date, c'était le 25 juin?

INTERPRETER: And also, just to be clear, Mr. Dearden has just obtained the permission to submit a cost outline, the 25th of June?

LE TRIBUNAL : Le 25 juin. C'est faite par écrit donc, à ce moment-là, je vais vous donner 10 jours du temps que vous la recevez

là pour me répondre par écrit puis si vous avez des commentaires à faire concernant le montant de dépends qui est demandé.

INTERPRETER: Yes, it's done in writing. I will give you until - 10 days from when you receive it so to reply to me in writing, if you have any submissions to make with regards to the costs that are sought.

DENIS RANCOURT : Si je peux oser demander 15 jours, j'apprécierais beaucoup parce que je pense qu'il y a des questions de droit qui vont être significatives. Est-ce que ça serait possible d'avoir 15 jours, Monsieur le juge?

INTERPRETER: If I can dare ask for 15 days, I would appreciate because I think that there are points of law that will be considerable. Is it possible to have 15 days?

LE TRIBUNAL : Normalement, y'a - c'est pas bien - oh, oui, d'accord. D'accord.

INTERPRETER: Normally - all right. All right. You know what? All right.

DENIS RANCOURT : Merci.

INTERPRETER: Thank you.

MR. DEARDEN: And five days to reply, Your Honour?

THE COURT: Five days to reply.

LE TRIBUNAL : Une des choses qu'on va - on devrait peut-être parler tout de suite parce qu'on est dans des dates là. C'est le - j'ai tu un calendrier? Je vais suggérer pour

5 l'audience pour la question de permettre à
monsieur Rancourt de démontrer pourquoi il
devrait pas être déclaré en outrage là, je
propose qu'on fasse ça, pour donner
suffisamment de temps, monsieur Rancourt, de
se trouver un procureur, s'il le désire là,
je vais fixer ça au 25 décembre - septembre.
Est-ce que c'est...

10 INTERPRETER: One of the things that we
should speak about right now, 'cause we're
talking about dates, we should talk about -
do I have a calendar? I'm going to suggest
for the - to allow Mr. Rancourt to show cause
why he should not be found in contempt of
15 court, I'm going to suggest that - I'll give
enough time to Mr. Rancourt to find a lawyer.
So, let's set the 25th of December -
September. I'm sorry. September 25th.

20 THE COURT: Is that an available date for
everybody, the 25th at 10 o'clock, 25th of
September for the show cause hearing?

MR. DEARDEN: I'm available September 25th,
Your Honour.

25 LE TRIBUNAL : Donc, ça donne....

INTERPRETER: So, that gives...

DENIS RANCOURT : C'est un jeudi?

INTERPRETER: It's a Thursday?

30 LE TRIBUNAL : Oui. Ça donne près de quatre
mois là. Ça fait que vous devriez être
capable vous trouver un avocat. En tout cas,
c'est ce que je vous recommande, mais...

INTERPRETER: Yes. It gives almost four months. So, you should be able to find a lawyer. Well, that's what I'm recommending you anyway.

DENIS RANCOURT : Oui, je suis disponible ce jeudi, Monsieur le juge.

INTERPRETER: Yes, I'm available that Thursday.

LE TRIBUNAL : D'accord. Le 25 septembre pour un *show cause*.

INTERPRETER: The 25th of September.

DENIS RANCOURT : Juste pour clarifier, vous avez appelé ça une procédure comment déjà? Que je dois...

INTERPRETER: But just to clarify, Your Honour, you're going to, to talk - you called this what kind of proceeding? That I have to...

LE TRIBUNAL : Oui, on a en preuve devant le tribunal beaucoup de matériel qui a été publié par vous qui indique des choses qui se sont déroulées dans l'absence du jury qui ont été publiées.

INTERPRETER: Yes. We have in evidence before the Court many materials published by you that indicate matters that transpired in the absence of the jury and these were published.

DENIS RANCOURT : Mm-hmm.

LE TRIBUNAL : C'est strictement interdit de faire ça et basé là-dessus, il va falloir que

vous démontrez pourquoi je devrais pas, pour ces gestes-là, ces publications-là, vous déclarer en outrage.

INTERPRETER: It's strictly forbidden to do that. Based on that, you will need to demonstrate why I shouldn't find you, because of your actions, find you in contempt of court.

DENIS RANCOURT : Okay, donc, c'est considéré des preuves admises déjà, ces documents-là?

INTERPRETER: So, these are considered admitted as evidence?

LE TRIBUNAL : C'est - oui.

INTERPRETER: Yes.

DENIS RANCOURT : Et...

LE TRIBUNAL : C'est devant le tribunal pendant le procès, oui.

INTERPRETER: It's before the Court during the trial.

DENIS RANCOURT : Donc, c'est présumé que je suis coupable et donc, j'ai une chance de essayer de démontrer que je devrais pas être trouvé coupable, si je comprends bien?

INTERPRETER: So, it's to be pre-assumed that I am guilty and I have an opportunity to show that I shouldn't be found guilty?

LE TRIBUNAL : Non, bien, vous pourriez - vous pourrez toujours démontrer - je sais pas si vous seriez capable. Vous pouvez démontrer vous avez pas publié ou quelque chose comme ça. C'est...

INTERPRETER: No, you will always be able to demonstrate - I don't know if you'll be able to show but you'll be able to show that you did not publish - something like that.

DENIS RANCOURT : Donc, c'est là...

LE TRIBUNAL : Ça fait que c'est pour ça que je vous suggère, au moins, d'obtenir sérieusement de consulter un avocat pour avoir au moins des - la meilleure façon de procéder et de vous préparer.

INTERPRETER: That's why I'm suggesting that you retain, quite seriously, consult a lawyer, at the very least, to find out what the best way forward would be for you.

DENIS RANCOURT : Et est-ce que le - les critères de preuve sont criminelles, Monsieur le juge? C'est-à-dire, est-ce que c'est...

INTERPRETER: And the criteria of evidence, are these criminal criteria?

LE TRIBUNAL : Oui, oui.

INTERPRETER: Yes.

DENIS RANCOURT : ...*beyond a reasonable doubt?*

INTERPRETER: Beyond a reasonable doubt?

LE TRIBUNAL : Oui, oui.

INTERPRETER: Yes.

DENIS RANCOURT : Donc, c'est un...

LE TRIBUNAL : Donc, consultez un avocat, okay, parce que je suis pas ici pour vous donner des avis...

INTERPRETER: You go and consult a lawyer.

I'm not here to give you legal advice.

DENIS RANCOURT : Non, je comprends.

LE TRIBUNAL : ...légaux. Okay. Fait que on est prêt pour procéder maintenant. Donc, avec vos représentations sur la question de l'injonction.

INTERPRETER: So, let's proceed with your submissions, sir, with regards to the injunction motion.

DENIS RANCOURT : Merci.

INTERPRETER: Thank you.

LE TRIBUNAL : Vous me donnerez le dossier de procès là. Je vais endosser ça aussi, que ça soit clair pour pas qu'on oublie. Ah, je l'ai encore ici là? Je vais endosser aussi donc ces dates-là là. Excusez-moi un instant là, monsieur...

INTERPRETER: You will give me the trial record. I will endorse it so that it also be clear. I also have it here? Okay, I still have it here. I will endorse those dates. I'm sorry.

DENIS RANCOURT : Oui, tout à fait, Monsieur le juge.

LE TRIBUNAL : Je vais endosser aussi donc - okay.

INTERPRETER: Give me just a moment, Mr. Rancourt. I'm going to endorse the record to reflect.... All right. *[Inaudible]*.

THE COURT: Costs, bill of cost to be submitted by plaintiff on or before June 25th,

2014. Defendant to answer within 15 days of the receipt and plaintiff may reply within five days thereafter.

DENIS RANCOURT : Et si je peux me permettre d'ajouter, Monsieur le juge, est-ce qu'on pourrait ordonner que les services peuvent se faire par courriel, s'il vous plaît?

INTERPRETER: And if I may add, Your Honour, could we also order that service be permitted by email?

LE TRIBUNAL : D'accord.

INTERPRETER: All right.

DENIS RANCOURT : Merci.

INTERPRETER: Thank you.

MR. DEARDEN: No, Your Honour, unfortunately with this individual, when he - he could be putting in like a foot of material and he's had a habit of serving us without putting tabs or any Table of Contents so he can - the way we've been doing it is we serve an electronic copy but we also serve a hard copy that has to have a Table of Contents and tabs, if he's using tabs. That's the way we've been doing it and that's the way I would ask that it continue to be done.

DENIS RANCOURT : C'est, c'est, c'est purement pour que simple - simplifier les choses. Je prévois pas...

INTERPRETER: This is purely to simplify matters.

LE TRIBUNAL : Bien, ça simplifie pas les

choses si vous avez beaucoup de matériaux annexés. Ça me fait...

INTERPRETER: Well, it doesn't simplify matters if you have a lot of materials attached.

DENIS RANCOURT : Non.

LE TRIBUNAL : Moi, ça me fait pas rien que si vous nous envoyez vos - votre - vos représentations écrites, mais si vous attachez beaucoup de documentation, on est pas pour - on peut pas recevoir ça par *email*. Donc, de toute façon et vous avez - si vous avez 15 jours pour les signifier et les déposer à la cour, je vois pas vraiment le problème.

DENIS RANCOURT : Okay.

LE TRIBUNAL : Mais si vous avez beaucoup de temps là, vous venez à la cour comme tout le monde font, vous le déposez à la cour puis vous allez en mener une copie chez Gowlings.

INTERPRETER: It doesn't bother me if you send us your submissions, your written submissions, but if you attach a lot of materials, well, I'm not going to - we can't receive that by email so in any event, if you have 15 days to serve and file with the court, I don't see a problem. You know? You have a lot of time, as everybody, file it with the court and bring a copy to Gowlings.

DENIS RANCOURT : Oui, la copie papier prend deux jours à, à être produite. Donc, ça

m'enlève deux jours. C'est juste ça.

INTERPRETER: All right. The copy - the paper copy takes two days to be produced, that's all. It takes away two days from my time.

LE TRIBUNAL : Ah. Okay, mais là, c'est pour ça vous avez 15 jours. D'accord. Donc, on a ça. Deuxièmement, *show cause hearing*...

INTERPRETER: Well, I get - that's why you have 15 days. All right. Secondly...

DENIS RANCOURT : Parce que je, je, je signale que monsieur Dearden a 20 jours d'ici au 25 et que moi, j'ai 15 jours et que on vient de m'enlever deux jours. Alors, peut-être que ça serait - je demanderais d'avoir 20 jours dans ce cas-là et je vais donner des livres avec *tabs* et tout dans 20 jours.

INTERPRETER: Because I point out that Mr. Dearden has 20 days between here and the 25th and that I have 15 days and two of those days have just now been taken away from me, so I would ask to have 20 days and then I can give books with *tabs* and everything in 20 days' time.

THE COURT: Show cause hearing concerning contempt of defendant to be heard September 25th, 2014, at 10 a.m.

LE TRIBUNAL : Je suis d'avis, monsieur, vraiment je crois que vous avez amplement de temps à 15 jours. Bon, allons-y.

INTERPRETER: I think Mr. - sir, you have

ample time in 15 days. All right, so let's go ahead.

SUBMISSIONS BY MR. RANCOURT:

DENIS RANCOURT : Bon, alors, maintenant je, je donne ma réponse par rapport à cette motion pour ce qu'on appelle en anglais *permanent injunction* et *take down*.

J'aimerais - est-ce que je pourrais avoir accès aux autorités parce que y'a une autorité que j'aimerais lire un paragraphe et je, je l'ai pas devant moi, mais je suis certain c'est dans les autorités de monsieur Dearden. C'est Grant v. Torstar, je crois, la Cour suprême, 2008, et je suis certain que c'est - ça doit être dans ses autorités et ça serait très simple pour moi de le trouver et de pouvoir lire le paragraphe en question, si je pouvais avoir...

INTERPRETER: All right so, now, I will give my reply to this permanent injunction or take down motion. I would like to - may I have access to the authorities? There's one authority I would like to read a paragraph. I don't have it in front of me but I'm sure that it's in Mr. Dearden's authority. It's Grant v. Torstar, Supreme Court, 2008. I'm sure that it must be in his authorities and it would be very simple for me to find and be able to read it...

LE TRIBUNAL : Ce - mais c'est pas une

décision qui est soumis pour cette motion
ici, mais vous dites c'est un...

INTERPRETER: But this is not a decision that
is being submitted for this motion.

DENIS RANCOURT : Il est pas soumis pour -
par monsieur Dearden, mais c'est une que je
veux utiliser, moi, dans ma réponse et donc,
elle fait partie, vu que c'est une cause en
diffamation, je crois qu'elle fait partie des
autorités que monsieur Dearden a soumis à la
Cour. Si je me trompe, monsieur Dearden peut
me corriger, mais j'aimerais pouvoir
consulter cette autorité, si c'était
possible. Monsieur Dearden a soumis trois...

INTERPRETER: It's not submitted by Mr.
Dearden but is one that I want to use in my
reply. So, therefore, given that it's a
defamation suit, I believe that it's part of
the authorities that Mr. Dearden submitted to
the authorities. If I'm mistaken, Mr.
Dearden can correct me but I would like to be
able to correct that authority if it's
possible. Mr. Dearden...

LE TRIBUNAL : Vous avez le numéro du
paragraphe?

INTERPRETER: You have the number of the
paragraph?

DENIS RANCOURT : Oui, c'est le paragraphe 2.

INTERPRETER: Yes, paragraph 2.

LE TRIBUNAL : Paragraphe 2?

INTERPRETER: Paragraph 2?

DENIS RANCOURT : Oui. Et la raison que...

INTERPRETER: Yes.

LE TRIBUNAL : Est-ce qu'on a ici des - je
sais pas si j'ai les - si vous avez - vous
voulez tout simplement référer à une...

INTERPRETER: Do we have here? I don't know
if I have - if you have documents referred...

DENIS RANCOURT : Oui. Aux autorités de
monsieur Dearden. Il y a trois volumes
d'autorités.

INTERPRETER: Mr. Dearden's authorities.
There are three books of authority, three
volumes.

LE TRIBUNAL : Ça, c'est?

GREFFIER DE LA COUR : Ça, c'est les
exhibits.

LE TRIBUNAL : Okay, ça, c'est les exhibits.
Le *factum* lui?

MR. DEARDEN: Your Honour, I never relied on
that authority.

DENIS RANCOURT : Non? Dans ce cas-là, c'est
parce que je suis même pas certain du nom de
l'autorité, mais j'avais l'impression que
elle serait, parce que c'est une autorité
importante en diffamation. Je me trompe
peut-être, mais si, si elle n'est pas là,
dans ce cas-là, je me trompe, mais je voulais
voir si elle est là. C'est tout.

INTERPRETER: In that case, it's because I'm
not even sure of the name of the case but I
thought it was - because it's an important

authority in defamation and maybe I'm mistaken but if it's not there, well, in that case, I'm making an error. I wanted to see if it was there. That's all.

MR. DEARDEN: Well, I just quickly looked through the Table of Contents of the three volumes Your Honour, I'm not seeing it but I'm gonna - because sometimes my seeing isn't very good. I'm gonna give it to my associate to confirm but I - at any rate, I know I didn't rely on Grant v. Torstar in the injunction factum and of course, this defendant could have made a copy himself.

MS. SEMENOVA: It's not here.

DENIS RANCOURT: No?

MS. SEMENOVA: No.

DENIS RANCOURT : Alors, je me trompe. Si c'est pas dans les trois volumes que monsieur Dearden a soumise, dans ce cas-là, il va falloir que je vous dise ce que ça dit de mémoire, Monsieur le juge. Je m'excuse pour ça.

INTERPRETER: All right. If it's not there, well, I'm in error. If it's not in the ones that Mr. Dearden submitted, I will have to tell you what it says from memory, I'm sorry about that, Your Honour.

LE TRIBUNAL : Oui, je l'ai - j'ai les trois volumes puis c'est pas là non...

INTERPRETER: I have the three volumes here.

DENIS RANCOURT : Okay. Je suis même pas

certain que c'est Grant v. Torstar. J'ai pas eu le temps de vérifier là, mais je suis...

INTERPRETER: So, I'm not even sure if it's Grant v. Torstar. I didn't have a chance to check.

LE TRIBUNAL : Dites-moi c'est quoi le principe que vous dites que cette cause-là dit.

INTERPRETER: Well, give me the principle...

DENIS RANCOURT : Alors, le principe est le - oui, oui, Monsieur le juge. Donc, dans le paragraphe 2 de cette décision que je crois est Grant v. Torstar, que je crois est en 2008 et qui est certainement de la Cour suprême, le paragraphe 2 dit - je paraphrase évidemment parce que je peux pas me souvenir de ça, mais essentiellement, ça dit que dans une société démocratique où on a la liberté d'expression, la façon de protéger la réputation, c'est avec les dommages et que on empêche pas la, les - la personne de s'exprimer, mais qu'on répare les dommages à la réputation avec des dommages. C'est ça le principe qui est exprimé dans ce paragraphe-là et ça, c'est un principe qui est très, très reconnu dans le - dans le droit commun et c'est un principe qui est reconnu dans toutes les juridictions, que la façon que on équilibre le, le, le droit de l'expression libre avec la protection de la réputation, c'est avec les dommages. C'est un principe

bien...

INTERPRETER: Yes, Your Honour. So, in paragraph two of that decision that I believe to be Grant v. Torstar, that I believe to be in 2008, certainly of the Supreme Court, paragraph 2 states and I'm going to paraphrase, obviously, because I can't remember but in a democratic society where freedom of expression is found, the way to protect a reputation, it's with damages and that we do not preclude an individual to express themselves but damages are repaired by damages. That's the principle that's explained in that paragraph and that's a principal that is very, very recognized in common-law and it is a principle that is recognized in all jurisdictions, that the way to balance freedom of speech with the protection of reputation is through the award of damages but are you going...

LE TRIBUNAL : Mais est-ce que vous allez payer les dommages? Est-ce que vous avez payé les dépends?

INTERPRETER: Have you paid damages? Have you paid costs?

DENIS RANCOURT : Y'a, y'a pas eu de dommages encore. Maintenant, ils viennent d'être...

INTERPRETER: There haven't been damages yet.

LE TRIBUNAL : Non, non, mais avez-vous payé les dépends? L'argument, vous - ce point de principe-là n'est pas nécessairement

5 incorrect ce que vous dites. Ça l'a un sens
que s'il y a des dommages, ça se peut très
bien que ça soit suffisant et pour dissuader
la personne de continuer et pour la réparer,
mais si - l'argument ici qui est fait c'est
que y'a de la preuve comme quoi - que les -
y'aura pas de compensation payée. Donc, à ce
moment-là...

DENIS RANCOURT : Avec...

10 LE TRIBUNAL : ...il faut passer à d'autres
choses. C'est ça qui est l'argument.

15 INTERPRETER: No, no, but have you paid - the
argument is that principle rule is not
necessarily incorrect in what you're saying.
It's got some merit that if there are damages
that very well, it could be sufficient and to
dissuade the individual from repeating and
also to remedy but the argument that's made
to me is that the evidence before us is such
20 that there won't be any payment of damages,
so then we have to move on to something else.
That's the argument.

25 DENIS RANCOURT : Oui, je, je comprends
l'argument et je suis en train de répondre,
Monsieur le juge. Avec tout respect,
j'aimerais pouvoir faire mon argument.

30 INTERPRETER: Yes, I understand the argument
and I'm trying to reply to it and I - with
all respect, I would like to be able to be
able to make my submissions.

LE TRIBUNAL : Oui, oui, oui.

DENIS RANCOURT : Okay.

LE TRIBUNAL : Okay, excusez-moi. Allez-y.

Non, je voulais juste bien comprendre,
mais...

INTERPRETER: I just want to make sure to
understand...

DENIS RANCOURT : Non, je, je, je...

LE TRIBUNAL : ...je suis d'accord avec
vous...

DENIS RANCOURT : ...je, je, je...

LE TRIBUNAL : ...de base, je suis d'accord.

DENIS RANCOURT : ...je suis en train
d'élaborer mon argument, Monsieur le juge, et
j'apprécierais la chance de, de la faire...

INTERPRETER: ...and I'm elaborating my
argument and I would appreciate the
opportunity to do so...

LE TRIBUNAL : Oui, oui, bien allez-y.
Allez-y.

INTERPRETER: Well, all right, go ahead. Do
so.

DENIS RANCOURT : ...de façon ordonnée et
claire. Donc, ce principe est un principe -
en faite, c'est très nouveau le, le -
récemment, il y a eu dans, dans les bancs -
dans les cours d'instance première, ce qu'on
appellerait en anglais, a *flurry*
d'injonctions, mais c'est très récent comme
phénomène. Avant, avant 2006, 2007, ça
n'existait à peu près pas. C'était rare.
Certains ont associé ça au fait de l'Internet

et tout ça, mais il reste que y'a, y'a à peu près pas de cas d'injonction permanente qui sont allés en appel directement. Monsieur Dearden a cité un cas de la Cour appel - la Cour d'appel qui est le cas - il a cité la Cour d'appel - donné moi une seconde là. Il a cité *Barrick Gold* et *Barrick Gold* n'était pas un cas où on disputait la validité du test, le soi-disant test que monsieur Dearden a décrit où on a soit - le test que monsieur Dearden a décrit, c'est soit y'a une bonne chance que la personne diffame l'autre, continue à diffamer l'autre et la deuxième branche de ce test, c'était que y'a une bonne chance que les dommages puissent jamais être payés. Donc, le cas qui est allé à la Cour d'appel de *Barrick Gold* que - auquel monsieur Dearden a fait référence, n'était pas un cas où on évaluait et on allait en appel vis-à-vis de ce test. Pas du tout. Ce test n'est pas établi à une Cour d'appel, aucunement. C'est, c'est simplement la jurisprudence qui n'est pas liante et qui est uniquement dans les cours de, de première instance, que ça été développé tout récemment, ce soi-disant test. Moi, j'appellerais même pas ça un test. Donc, ça, c'est très important de le savoir que, à mon sens, vous n'êtes pas lié par ce soi-disant test et, et il n'a pas été établi. Il n'a - il n'est pas allé en appel. Aussi, il est établi dans le - dans le droit

commun qu'une injonction permanente, c'est - ça devrait être rare et c'est - on pourrait dire en anglais, *Draconian*, surtout et ça, le, le, la, les - la jurisprudence le dit clairement. Surtout dans des cas où on, on veut empêcher une personne d'exprimer quelque chose, qu'on sait même pas encore ce qu'elle va exprimer. C'est-à-dire on veut la taire d'avance, avant même de savoir quels sont ses propos. On veut la taire d'avance. Ça, c'est un cas où les cours ont dit il faut faire très, très attention à des cas comme ça. J'ai, j'ai lu les autorités récemment, mais j'ai pas eu le temps de les amener et je peux pas les citer de mémoire, mais c'est un - ça, c'est un cas où il faut faire très attention. Y'a la, la, la Cour d'appel du Québec a fait des énoncés à cet effet-là, que c'était très dangereux de - d'aller dans ces - ce genre de direction là. En plus, dans ce cas-ci, Monsieur le juge, le jury a fait une détermination de dommages entièrement reconnaissant de - en connaissance de causes. C'est-à-dire que le jury, avait devant lui, les trois tombes (ph) d'exhibits, les tombes 2A, 2B et 2C, qui sont les tombes où les médias ont parlé du cas ou j'ai communiqué ou j'ai fait des, des, des articles blogues à propos du cas, etcétera. Tout ça était connu par le jury et le jury, sans qu'il est la notion qui pouvait y avoir un injonction

quelconque, a établi des dommages, qui
entièrement, d'après eux, étaient suffisants
pour réparer la réputation de la plaignante
et pour régler la question. Donc, ça - cet
étape-là a déjà été fait par un jury qui, qui
avait pleinement ces informations-là et qui
n'a pas considéré que - dans sa décision, que
en plus, on pourrait faire taire le
défendant. C'était pas du tout dans son
calcul. Le jury a émis une - un [sic]
quantité d'argent en dommages qui supposait
qu'il n'y aurait pas une telle procédure
additionnelle. Jamais on le lui a mentionné
ça au jury. Donc, les dommages qui ont été
attribués sont entièrement, dans l'esprit du
jury, un remède de ce qui c'est passé dans
cette action, dans ce cas-ci. En plus, les
articles en question, dont on se plaint, il y
a plusieurs catégories de ces actions - de
ces articles-là. Par exemple, il y a les
articles dans les médias de masse, les médias
de troisième partie, comme le Citizen, le
National Post, etcétera. Ces articles-là ont
été écrits par des médias de haute
réputation, qui ont utilisé leurs éthiques
professionnelles pour décider exactement ce
qu'ils allaient dire et comment ils allaient
le dire et si c'était justifié de le dire.
Ils ont des avocats qui les guident dans
leurs propos. Ils sont professionnels et
indépendants. On ne peut pas dire que le

fait que je demandais que les médias ait un survol et un regard sur cette affaire, peut être une évidence quelconque d'un, d'un - d'une malveillance ou de quelque chose qui n'est pas correct ou d'essayer de répéter une diffamation. Ça ne peut pas être considéré ça parce que on doit prendre pour acquis - on doit accepter que les médias font leurs travaux et qu'ils ont un travail essentiel dans notre démocratie et que c'est ouvert à tous les citoyens de faire appel aux médias, même si ce citoyen est un défendant dans une cause en diffamation. Y'a, y'a, y'a aucune logique qui rend ça inacceptable. Donc, toutes [sic] les articles médiatiques et je pense que c'est un abus de logique de dire que c'est moi qui a causé ces articles-là. Il y a un intérêt médiatique par rapport à cette action et cet intérêt est réel et indépendant de moi et j'ai - quand je demande que les médias ou je suggère que les médias peuvent regarder quelque chose, y'a aucune évidence qu'ils ont tendance à m'écouter. Ils prennent leurs décisions indépendamment de toute suggestion par rapport à leurs critères vis-à-vis de leurs lecteurs, de leurs éditeurs, etcétera. C'est indépendant de moi et de suggérer une telle chose, je pense est un abus de logique. Ça, c'est la catégorie de tout ce qui est article médiatique. Par exemple, je vais donner

juste un exemple. Le National Post a, dans un de ses titres, utilisé le terme *house negro*, dans son titre. C'était son choix. Si monsieur Dearden voulait dire que un journal national avait répété une diffamation, monsieur Dearden avait l'option, avait le remède de faire poursuite au National Post. Il n'a pas fait ça. Il n'a fait rien de ça, mais il veut, par contre, faire croire que c'est moi qui serait responsable que le National Post ait décidé de décrire se qui se passe dans la cour et dans notre société en utilisant ce terme-là et je trouve ça presque absurde. Ça, c'est pour tout ce qui est la catégorie des articles médiatiques. Ces articles médiatiques incluent aussi le *Law Times*, qui est un journal très réputé de droit et le *Law Times* en - je crois que c'était en 2011, a publié un article qui est en évidence, qui est en exhibit, je crois, et cet article-là répète les deux côtés, répète quel est le *claim* et répète quelle est la défense et cite les choses qui sont dites et même donne le lien à l'article blogue dont on se plaint. Le *Law Times* donne le lien à l'article blogue du 11 février 2011, dont on se plaint, dans un article professionnel, écrit pour le *Law Times*. On décrit la cause en détail. On explique les énoncés de Malcolm X et on donne le lien à l'article en question. Un autre

exemple, c'est un avocat qui s'appelle monsieur Redeye (ph) qui fait un blogue, qui blogue en tant qu'avocat sur des questions légales et ce monsieur Redeye et, et je suis - je pense que cet article blogue est en évidence. C'est un des exhibits, mais cet, cet avocat, maître Redeye, c'est peut être juste une partie de son nom composé de famille là parce que je fais ça de mémoire, mais ce monsieur Redeye a décrit en détail la cause en diffamation sur son blogue et lui aussi a mis le lien à l'article original dont on se plaint, du 11 février 2000 - 2011 et il a aussi mis sur l'Internet, indépendamment de moi, il a mis sur Internet le *Statement of Claim* et dans le *Statement of Claim*, on répète entièrement les articles dont on se plaint. Okay? Donc, il est clair que des rapporteurs, qu'ils soient des avocats, qu'ils soient des journaux légaux, qu'ils soient les médias de masse, ont et vont décrire des actions civiles en expliquant ce qui se passe, en citant les documents et même en mettant des liens aux documents, explicitement sur leurs propres sites Web. Ça, c'est clair. Alors, étant donné ça, je vois mal comment on peut utiliser le fait que moi je fais la même chose. C'est-à-dire que j'ai écrit des articles blogues et là, j'en viens à la troisième catégorie ou la deuxième. Je sais pas si c'est la deuxième

ou la troisième, mais une autre catégorie d'articles dont on se plaint, c'est mes articles sur *U of O Watch*, où je parle de l'action qui procède et des différentes choses qui se passent dans l'action, des motions, etcétera, et où je - j'informe le public de ce qui se passe. Vous allez remarquer que on a jamais regarder ces articles un à un pour essayer de faire une détermination, est-ce que l'article lui-même, le nouvel article est diffamatoire ou pas? Est-ce qu'il est pas équilibré? Est-ce qu'il est injustifié pour une raison quelconque? On a pas fait ça. On a simplement dit au jury, voici un paquet d'articles. On va même pas prendre le temps des regarder et d'argumenter individuellement pour chacun qu'est-ce qui a de pas correct dans ces articles-là, mais le fait que y'en a - le fait que y'en a est en soit, une évidence que y'a quelque chose de pas correct, qu'on essaye d'attirer de l'attention. Et bien moi, je vous dis, Monsieur le juge, que ce, ce n'est tenable cette position-là parce que le *U of O Watch* est dévoué à décrire toutes les choses auxquelles je suis au courant et auxquelles je prends de l'information qui concerne l'Université d'Ottawa et ce blogue a toujours fait ça et il a toujours fait des liens aux documents qui sont pertinents en discutant ces choses-là et beaucoup de ces

articles, dont se plaint monsieur Dearden, sont simplement des liens à des articles médiatiques qui ont déjà été publiés où, où simplement l'article blogue dit il y a tel article médiatique. Ça donne le titre et ça met un lien à cet article médiatique.

Beaucoup de ces articles-là sont de ce type-là, très simple. Simple, simplement signaler où on peut aller trouver l'information d'un autre rapport. Donc, le point important ici, c'est que je suis considéré, en tant que blogueur, quelqu'un qui a le statut, en terme de ma protection, d'un journaliste et la question est, est-ce que mon « journaliste » est équilibré? Est-ce qu'il est diffamatoire? Etcétera. Mais aucun de ces articles-là n'ont été démontrés comme étant diffamatoires en soit et...

INTERPRETER: And clear. So, this principle is, in fact, it's very new. Recently, there's been in first - in trial courts, there's been a flurry of injunctions but it's very recent as a phenomenon because prior to 2006, 2007, it almost was non-existent. It was rare. Certain individuals have associated that to the explosion of the Internet but it remains that there are about no cases of permanent injunctions being granted and going straight to appeal. Mr. Dearden quoted a Court of Appeal decision, the case of - he quoted - give me just a

moment - *Barrick Gold* and *Barrick Gold* was not a case where it was - challenged the validity of the test that Mr. Dearden has described whether there are - the test as described by Mr. Dearden is that there is a good likelihood that defamation will continue and the second branch of that test was that there's a good chance that damages may never be paid. So, the Court of Appeal matter that was heard, *Barrick Gold*, referred to by Mr. Dearden and this wasn't an appeal of that test, not at all. This test is not established at the Court of Appeal level in no way. It's simply a case that is not binding and it is uniquely - solely found at trial courts level and that this - I wouldn't even call this a test, this new test. So, that's very important that you know that, that in my view, you are not bound by this so-called test and that it hasn't been established. It hasn't been heard by the Court of Appeal. Also, it is established in common law that an injunction, a permanent injunction, should be rare and if we can say in English, Draconian, especially and the jurisprudence says this clearly, especially in cases where we want to prevent somebody from expressing something that we don't even know yet what they're going to express. In other words, we want to get the person in advance before knowing what they want to say.

We want to gag or silence them and this is the case that in courts we say that we have to be very careful about these cases. I read the authorities recently but I did not have the time to study them in depth and I can't quote them. We have to be very careful in these cases. We have the Quebec Court of Appeal that made statements in this effect, that it was very dangerous to go in this sort of direction. Furthermore, in this case, Your Honour, the jury determined damages in full knowledge of the case that he had three volumes of exhibits 2(b) and (c) that are volumes where the media spoke about cases that - were I communicated or wrote articles in my blog related to this case and the jury knew about all of this. It was all communicated to them. They didn't know that there was going to be any kind of injunction. They established damages that, in their opinion, was entirely sufficient to repair the plaintiff's reputation and deal with the cause. So, this was already done by a jury, that fully had this information and did not consider that in their decision, on top of this, they could silence the defendant. This was not at all in their calculations. The jury established an amount of money and damages that presupposed that there would not be any such additional procedure. This was never mentioned to the jury. So, the damage

that were attributed are fully, in the jury's mind, a remedy for what has happened in this action, in this case. Furthermore, the articles in question that have been the object of complaints, there are several categories of articles. For instance, there are articles in the mass media, in the third party media, like the Citizen and National Post and so forth. These articles were written by highly reputed media. They used their professional ethics to say exactly what they said and what they were going to say and whether it was justified to say what they said. They have lawyers who guide them and the wording, they are professional and independent. We cannot say that the fact that I was asking the media to give an overview or look at this case could be any kind of evidence of malice or anything that is unacceptable or to repeat defamation. This cannot be considered as such, because we must take it for granted. We must accept that the media are doing their job and they have an essential role to play in our democracy. It is open to all citizens to solicit the media even if the citizen is a defendant in a defamation case. There is no logic that would render this unacceptable. So, all these media articles and I think it's - the logic is being abused to say that I have caused these articles. There is a media

interest in this action and this interest is real and independent of me. When I ask the media or suggest the media to have a look at something, there is no evidence that they tend to listen to me. They make their decisions independently of any suggestion and they will respect their own criteria and the criteria of their editors and readers. It's independent of me and to suggest such a thing, I think is just an abuse of logic. That is the - everything related to the category of media articles. For instance, and I would just give one example, the National Post. In one of its headlines, used the term "house negro" in its headline, its title. This was their choice. If Mr. Dearden wanted to say that a national newspaper repeated a defamation, Mr. Dearden had the option or had the remedy of filing a lawsuit against the National Post but he did not do anything like that. He does wish, however, to make us believe that I would be responsible for a National Post decision to describe what is happening in the court and in our society by using this term and I find this almost absurd and that is what I had to say in relation to the media articles. These media articles also include the Law Times, which is a very highly reputable in times. I think it's 2011. It's an article that was filed in evidence, I believe, and this

article repeats the two sides. The claim is repeated and the defence is repeated. They cite what is said and even provide a link to the blog article that has been the object of the complaint. The Law Times gives a link - provides a link to the article of the 11 - 11th of February 2011, that is being complained of. In a professional article that was written for the Law Times, the case is described in detail. The statements of Malcolm X are explained and the link to the article in question is provided. Another example, is an attorney named Mr. Redeye, who has a blog, a lawyers' blog on legal questions and this Mr. Redeye, and I think this article or blog is - was entered in evidence as one of an - the exhibits and this attorney, Mr. Redeye, perhaps it's just part of his name, hyphenated name because this is just - I'm just mentioning it from memory, Mr. Redeye described in detail the defamation case in his blog and he also provided a link to the original article that is being complained of, dated February 11, 2011. He also posted on the Internet, independently of me, on the Internet, the Statement of Claim and in the Statement of Claim, the articles are fully repeated, the articles that are being complained of. So, it is clear that reporters, be it attorneys or legal newspapers or mass media, they have and they

5 will describe civil actions by explaining what is going on, citing documents and even providing links to the documents explicitly on their own websites. That is clear. So, given all this, I do not understand how you

10 can use the fact that I am doing the exact same thing. In other words, that I wrote articles on a blog and I'm coming back to the third or maybe it's the second category, I'm not sure anymore but another category of articles that are being complained of. These are articles on U of O Watch, where I talk about the action that is proceeding and the different things that are happening motions, and such and where I am informing the public of what is going on. You will notice that we never looked at these articles one by one.

15 We never tried to determine whether the article itself, the new article is defamatory or not; whether it is not balanced; whether it is unjustified for whatever reason. We never did this. We simply said or told the jury, here are a bunch of articles. We won't even take the time to look at them and argue them individually to see which one - what is not okay with each one of them separately, but the fact that there are some, this should be enough evidence of something that is not acceptable and something that we need to draw their attention to. I have to tell you, Your

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Honour, this is not acceptable. This position is not tenable because you have a watch described all the things that I am aware of and that I have information about and that are related to the University of Ottawa. This blog always did this. It always provided links to relevant documents and discussed these things. A lot of the articles that Mr. Dearden is complaining about are simply links to media articles that have already been published or simply the blog article mentions that there is an article, gives a title and there's a link provided to these media articles, a lot of these articles are - follow this model very simple. They just give you the information where you can find the information of - from another report. The important point here is that I am considered as a blogger, as somebody who has the status in terms of my protection, of a journalist. The question is, my "journalism", is it balanced or is it defamatory, and so forth but none of these articles have been demonstrated as being defamatory and such...

LE TRIBUNAL : Le problème, ça vous argumentez le procès. C'est faite ça. C'est fini ça. Ces questions-là sont des questions de fond que le jury a décidé. Ça n'a rien à faire avec la motion présente. À savoir si c'était diffamatoire ou pas, ça, le jury a

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décidé. Je veux dire, vous pouvez pas aller
- ça fait que ça, vous argumentez le fond.
Vous auriez dû être ici pour l'argumenter
devant le jury. Vous l'avez pas été. Ça,
c'est un - c'est votre problème, mais on peut
pas - c'est pas de ça qu'on parle dans le
moment. C'est est-ce que y'a de mise ou pas,
face à la décision du jury de - que ces
propos étaient diffamatoires? Est-ce qu'on
devrait ou pas émettre une injonction? C'est
ça qui est la question maintenant.

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INTERPRETER: The problem is that you are
arguing the process. This has already -
you're arguing the trial. This is finished.
These are - the jury already decided on all
this. This has nothing to do with the
current motion, the motion before us. Just
to find whether it's defamatory or not, the
jury already decided on this, ruled on this.
So, you are arguing the material facts and
this is your problem. This is not what we
are talking about now. Well, now we have to
see, after the jury's decision, whether the
wording was defamatory or not, whether we
have to issue an injunction or not. That's
the question at hand.

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DENIS RANCOURT : Oui. Monsieur le juge,
avec tout respect, vous vous - je crois que
vous vous me rédirigé et laissez moi
clarifier la question. Je ne parle pas des
articles - des deux articles diffamatoires

5 que le jury a déterminé étaient
diffamatoires. Je parle des - je sais pas
combien d'articles sur *U of O Watch* qui sont
des - je sais pas, 20 ou 30 ou 60. Je sais
plus trop combien y'en a dont on dit est une
évidence que je continue à diffamer et ça,
c'est pertinent à l'injonction parce que
monsieur Dearden utilise ça pour argumenter
que c'est de l'évidence que je vais continuer
à diffamer et mon point est que...

10 INTERPRETER: Yes, but with all due respect
Mr. - Your Honour, let me clarify the issue.
I - they're - I'm not talking about the two
articles, the defamatory articles that the
jury has determined as such. I am talking
15 about, I don't know how many articles on U of
O Watch, maybe 20, 30 or 60, I don't know how
many - where that are being - that are taken
as evidence that I might continue to defamate
and this is relevant to the injunction
20 because Mr. Dearden is use - is saying that
this is evidence that I'm going to continue
to be - have defamatory...

25 LE TRIBUNAL : Vous dites que vous répétiez
pas ça donc dans les autres articles?

INTERPRETER: So, you said that you're not
repeating this in the other articles?

DENIS RANCOURT : Exactement. On ne peut pas
dire que c'est de la répétition parce que...

30 INTERPRETER: Exactly. We cannot say that it
is repetition because...

LE TRIBUNAL : Pourquoi? C'est ça. Okay, expliquez moi ça.

INTERPRETER: Explain this to me.

DENIS RANCOURT : Okay.

LE TRIBUNAL : Pourquoi c'est pas de la répétition?

INTERPRETER: Why is this not repetition?

DENIS RANCOURT : Okay. La Cour supreme a dit qu'un lien, un hyperlien n'est pas une republication de, de la chose et n'est pas en soit diffamatoire parce qu'on met un lien. Et la, la Cour suprême - le, le, le cas est assez récent, 2011, 2000...

INTERPRETER: The Supreme Court said that a link, a hyperlink, is not a re-publication of something and is not, in itself, defamatory because a link is provided. The Supreme Court - the case is quite recent...

LE TRIBUNAL : Oui, oui, je suis au courant du cas, mais là...

DENIS RANCOURT : Oui.

LE TRIBUNAL : ...on parlait de quelqu'un qui le recoit puis que lui le - on parle pas de la même personne là. Dans votre cas, c'est la même personne. Si vous répétez que madame St. Lewis...

DENIS RANCOURT : C'est, c'est, c'est...

LE TRIBUNAL : ...est un *house negro* en référant à l'article, en leur mentionnant ou disant qu'elle avait caché quelque chose dans un autre article, c'est vous qui le faites.

C'est pas quelqu'un qui l'a envoyé à
quelqu'un d'autre là.

INTERPRETER: Yes, I am aware of the case but
we are talking about somebody who is
receiving them, receiving it. We're not
talking about the same person. In your case,

it's the same person. If you are repeating
that madam St. Lewis was a house negro
referring and - by referring to an article
where this was mentioned or that she has
hidden something in another article, you are
the one who is doing it. It's not somebody
who is sending a link to something else.

DENIS RANCOURT : Oui, mais la, la, la - le
point est que on a pas regardé si je répète
versus simplement mettre un lien et je vous
dis que il y a - il faut - y'aurait, y'aurait
fallu argarder les 68 articles en détail,
individuellement, parce que je pense pas, de
mémoire, qu'il y a un cas où j'ai répété.
Il, il - au, au plus, j'ai mis des liens et
au plus, j'ai expliqué la situation et en
expliquant la situation, j'ai dit que - en
autre mot, c'était un reportage sur ce qui se
passait en cour. Ce n'est pas...

INTERPRETER: Yes, but the point is we did
not look at whether I am repeating versus
just providing a link and I am telling you,
we should have looked at the 68 articles in
detail individually because I don't think,

5 from my recollection, that there is a case where I repeated. I - the most would be that I may be provided a link or explained the situation and in explaining the situation, I stated, in other words, it was a report on what was happening in court.

LE TRIBUNAL : D'accord. Donc, vous, vous

dites...

10 DENIS RANCOURT : Donc, ce n'est pas...

LE TRIBUNAL : ...c'est pas une répétition pour ces raisons-là.

DENIS RANCOURT : C'est parce que...

LE TRIBUNAL : Je vous comprends parce que...

15 DENIS RANCOURT : Mais, mais...

LE TRIBUNAL : ...c'était des liens puis parce que c'était un...

DENIS RANCOURT : Oui, et...

20 LE TRIBUNAL : ...explication de qu'est-ce qui ce passait?

INTERPRETER: So, you are saying that this is not a repetition for these reasons. I understand because they are links and it's an explanation.

25 DENIS RANCOURT : Et ce même - cette même explication, si elle avait été fait par le National Post ou moi, y'a aucune différence. Elle est soit diffamatoire ou elle l'est pas. Qu'elle soit fait par le National Post ou 30 qu'elle soit fait par moi, le blogueur, c'est ça mon point et, et, et on ne peut pas dire

que parce que quelqu'un est en train d'être poursuivi en diffamation, que cette personne-là perd ses droits d'expression automatiquement. C'est, c'est, c'est une - ça serait - je pense que la, la cour reconnaît ça. D'ailleurs, le test pour une injonction intérimaire est très élevé. C'est à peu près jamais donné.

INTERPRETER: Yes, and the same explanation, if it was given by the National Post or me, there is no difference. It is either defamatory or not. Be it done by the National Post or me the blogger, that is my point. And nobody can say that because somebody is being sued for a defamation, that this person is losing their freedom of expression automatically. That, I think the Court recognizes this. The test for an injunction, and beside - is very high and it's almost never...

LE TRIBUNAL : Mais là, on parle pas d'un injonction.

INTERPRETER: But we're not talking about...

DENIS RANCOURT : Non, non. Non, non, mais c'est un, un exemple. C'est - je fais le lien avec ce concept-là. Donc, y - on ne, on ne - on, on ne peut pas - excusez-moi, je vais prendre une gorgée d'eau, Monsieur le juge. Pour résumer cette dernière idée, Monsieur le juge, je dirais la chose suivante : si j'écris des articles qui

rapportent ce qui se passe en cour, comme le ferait n'importe quel média et que je l'ai fait coup par coup, pour les événements qui se passent en cour et donc disons 50 fois, je le sais pas, ce n'est pas plus inapproprié que les médias qui font ça. Il n'y a - il n'y a pas de - d'abus de, de ma part, de faire des reportages médiatiques sur un blogue qui rapporte ce qui se passe en cour ouverte et basée sur les documents qui sont soumis en cour, il y a aucune chose inappropriée de ça du fait que c'est moi versus un autre média parce que je n'arrête pas d'être un blogueur simplement parce que je suis poursuivi. Je reste un blogueur et je reste dans ma fonction de blogueur sur *U of O Watch* et donc, ça, c'est une fausse logique. Si monsieur Dearden veut prendre des exemples pointues sur les 50 ou 60 exemples et veut dire : « Ah, ah, voici. Regardez, ça, c'est un exemple. » Il a - je pense qu'il a montré un, un ou deux exemples comme ça dans son *compendium* et on peut parler de ces exemples-là. D'ailleurs, puisqu'on est sur le sujet, je vais le faire maintenant plutôt qu'à la fin, mais il a mentionné des commentaires où y'avait 14 commentaires dans une des - dans un des articles qu'il a pas aimé là.

INTERPRETER: No, I'm just giving you an example. I'm just making a link with this

concept. So, I'm just gonna have a bit of water, Your Honour. So, to summarize this last idea, Your Honour, I'm going to state the following: if I write articles that report what is happening in the court, as any other media would do, and if I did it step by step for what is happening in the court 50 times, let's say, this is not anymore inappropriate than the media who do this. There is no abuse on my part in giving media reports on a blog, and that report whether it's going on in an open courtroom and based on documents that are submitted in court, there is nothing inappropriate in this. The fact that it is me versus some other media - because I never stopped being a blogger just because I am being sued. I remain a blogger and I remain in my function of a blogger on U of U Watch and that's the logic behind this. If Mr. Dearden wants to take specific examples of the 60 or 70 cases and say, "Look this is one example.", and I think he mentioned one or two examples - such examples in the compendium and we can talk about them since we are on the topic, I am going to verify right away rather than later. She [sic] mentioned comments where there were 14 comments and one of the articles that he didn't like...

LE TRIBUNAL : Vous êtes à l'onglet quoi?

INTERPRETER: Which tab?

DENIS RANCOURT : Je cherche justement.

INTERPRETER: I am looking for it right now.

MR. DEARDEN: Six.

DENIS RANCOURT : L'onglet 6.

INTERPRETER: Tab 6.

LE TRIBUNAL : D'accord.

INTERPRETER: Okay.

DENIS RANCOURT : Okay. Ça, c'était le 23 juin 2011, très proche après d'avoir reçu le *Statement of Claims*. Y'a très longtemps et j'ai - ce, ce qui est à noter ici, si on veut se poser la question si y'a quelque chose d'inapproprié, c'est que j'acceptais tous les commentaires, qu'ils soient positifs ou négatifs. Donc, je faisais - je permettais un reportage équilibré de ce qui se passait dans la société en acceptant tous les commentaires et ça, c'est en évidence. Je l'ai dit en découverte. Je pense que monsieur Dearden l'a même répété devant la cour et il y a plusieurs articles, pas juste celui-là où j'acceptais tous les commentaires et il y a beaucoup - il, il y a certains de ces articles-là où la grande majorité, si pas tous les commentaires, étaient entièrement positifs à l'égard du Professeure St. Lewis. Donc, c'est commun de - et, et, et ça serait malveillant que de filtrer les commentaires pour qu'il y ait que des commentaires négatifs, mais le fait d'accepter tous les commentaires, comme le font les médias de

masse, excepté que ils appliquent un certain filtre, mais ils, ils admettent les commentaires d'un côté et de l'autre et même si il y a eu une, une erreur dans les commentaires qui ont [sic] été admie, c'est très rare. C'est un cas rare vis-à-vis des 60 ou plus de cas dont on parle. Évidemment, j'ai pas ici les documents pour vous montrer les autres exemples là où y'a plusieurs commentaires parce que j'ai pas eu le temps de, de faire ça. C'est important de signaler aussi que monsieur Dearden avait mis dans son *Statement of Claim* qu'il allait demander une injonction intérimaire. Il a jamais demandé une injonction intérimaire. Il a jamais trouvé que ce que je faisais était suffisant pour demander une injonction intérimaire et ça, c'est très différent du cas que monsieur Dearden a cité, qui est le cas de *Verdun*, dont il a beaucoup parlé où on a bloqué monsieur Verdun de, de discuter, de même nommer la personne qu'il avait diffamé, etcétera, parce que dans ce cas-là, y'avait, dès le début, une injonction intérimaire, qui n'avait pas été suivie. Y'a - donc, c'est un cas très différent du cas, du cas présent. Le cas principal de Astley c. Verdun est un cas très fondamentalement différent de celui qui est devant nous. Une autre différence importante avec le cas *Astley Verdun* et le cas présent, c'est que *Verdun* avait une

relation très personnelle avec la personne qu'elle diffamait; le connaissait personnellement; avait été - avait eu des relations d'affaire avec cette personne-là; se présentait en personne pour dire des choses à son sujet à des *meetings* et des choses comme ça. Il y a rien de ça ici. Je ne connais pas la Professeure St. Lewis. Je, je - j'ai jamais cherché à avoir des communications directes avec elle. Je n'ai aucun intérêt de faire ça. Il y a une fois au tout début de cette action où j'ai envoyé un courriel, où elle était en cc. J'ai envoyé à son avocat avec elle en cc parce que je voulais être certain que il voit ça. Tout de suite, monsieur Dearden m'a dit c'est - vous, vous ne devez pas communiquer avec ma cliente. Je n'ai plus jamais communiqué avec la plaignante à partir de ce point-là et c'était la seule fois. Donc, y'a, y'a, y'a une différence importante là. Monsieur Dearden a parlé de son test, que je dirais n'est pas un test, mais il a parlé des, des cas dans les cours de première instance là, deux branches et je veux adresser chacune de ces branches-là. Premièrement, il y a une chance que la personne diffame encore. Dans le cas qui est devant vous, jamais il y a eu une diffamation, autre que discuter l'article original. Si, si on veut considérer que c'est de la diffamation, ce que je n'accepte

pas. Jamais y'a eu autre propos que ça. Toujours, il y a eu que une discussion de la cause en diffamation vis-à-vis ce qui avait été dit, vis-à-vis ce qui se passait en cour. C'est la seule chose qu'il y a eu. Y'a jamais eu d'autres incidences ou d'autres contenus diffamatoires, quelques qu'ils soient, qu'on puisse imaginer, ce qui distingue ça des cas où on a appliqué ce test. Okay? Ça, c'est la première chose. Deuxièmement, même les choses que monsieur Dearden dit sont des évidences que j'aurais continué à diffamer, ne sont pas des diffamations parce que ce sont des reportages et des liens à des contenus qui sont déjà là et qui sont devant la Cour. Donc, le premier test n'est, n'est pas satisfait. Y'a aucune - y'a aucune raison de croire que je pourrais diffamer le Professeure St. Lewis à l'avenir. Le deuxième test, c'est qu'il y ait une possibilité que je ne puisse pas payer les dommages qu'ils soient attribués. Ça, c'est le deuxième test.

INTERPRETER: So, this was the 23rd of June 2011. It was very close after having received the Statement of Claim. So, it was a long time ago. What we must note here, if you want to ask the question of whether there is something inappropriate here, I accepted all the comments, be they negative or positive. So, I allowed a balanced report of

what was happening in society by accepting all comments and this was in evidence - I think I, I, I mentioned this in discovery and Mr. Dearden, I believe, repeated this in court and I think that there are several articles, not just this one, where I accepted all the comments and there are a lot, and there are some articles where the big - large majority was entirely positive towards Madam St. Lewis. So, it is very common. It would be malicious to filter comments but the fact of accepting - the fact that I accepted all the comments as mass media do, they apply some filters but they admit or they accept both sides, both types of comments. There was an - they will see if there's an error in their comments that were admitted. It's very rare. It's a very rare case, out of the 60 or more cases that we are talking about. Obviously, I don't have the documents with me to give you the other examples where there are several comments because I didn't have time to do that again. It's important to point out also that Mr. Dearden had put, in his Statement of Claim, that he was going to seek an injunction, an interim injunction. He never asked or sought an interim injunction. He never found that what I was doing was sufficient to justify seeking an interim injunction, and that is very different from the case that Mr. Dearden

5 quoted as being *Verdun*, and he went on at length where Mr. Verdun was precluded from discussing or even naming the defamed person because at the very beginning, there had been an interim injunction that hadn't been respected. So, it's a very, very distinct case from the one - Astley and Verdun is a case that is very fundamentally different from our case. Another important distinction with the *Astley Verdun* and the present case is that Verdun had a relationship, a very personal relationship with the person that they were defaming. She knew him personally; had had business relationship with that person; attended in person to say things about him at meetings and those kinds of things, but there's nothing of the sort in this matter. I do not know Professor St. Lewis. I've never sought to communicate directly with her. I have no interest of doing so. There is once, at the very beginning of this action, where I sent her an email. She was cc'd and sent it to her lawyer. I wanted to be sure that her lawyer saw this. Right away, Mr. Dearden told me, "You are not to communicate with my client." I never again communicated with the plaintiff, from that point forward, and that was the only time. So, there is a very important distinction to be had there. Mr. Dearden spoke about the test, that I would

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say is not a test, but he spoke of case law in trial courts, this two-branched test. I want to deal with each branch. First off, there's a chance that the person will continue to defame. In the case before you, never has there been a defamation, other than to discuss the original article. If you want to consider that it's defamation, which I don't consider, but there was never any other consideration. There was always a discussion of the defamation case. What had been said, what was going on in court, that's the only thing that there has been. There's never been any other instance or other defamatory content of any kind, that we could imagine, which distinguishes these with the test of the - the cases where the test was applied, that's the first thing. Secondly, even the evidence, as Mr. Dearden purports them to be, that I would continue to defame. They are only reporting and links to content that is already found and already before the courts. So, the first test is not satisfied. There is no reason to believe that I would continue to defame Professor St. Lewis, going forward. The second test, that there would be a possibility that I would not be in a position to pay the awarded damages, that's the second.

LE TRIBUNAL : Oui, ça, c'est un deuxième test, oui. Okay.

INTERPRETER: Yes, yes, all right. So, that's the second one.

DENIS RANCOURT : Oui, c'est la branche B.

INTERPRETER: So, this is branch B.

LE TRIBUNAL : Oui, oui. Non, je pensais vous étiez encore dans la branche - dans la première branche. Okay. Dans branche, deux, okay, d'accord.

INTERPRETER: No, no I thought you were still in the first branch. All right, so branch two.

DENIS RANCOURT : Dans le - dans la branche deux, il est nécessaire d'avoir une raison de croire que les dommages ne seront jamais payés. Bien qu'il est vrai que en ce moment, je n'ai pas d'emploi et que en ce moment, je n'ai pas d'argent ni de ressources, monsieur Dearden, lui-même, a argumenté devant cette cour que ma cause où j'ai été congédié est en appel en ce moment et que si jamais je gagnais cet appel, parce que mon syndicat est allé en appel, c'est-à-dire en *judicial review*, et si jamais je gagnais ça, monsieur Dearden, lui-même, a dit devant la Cour que ça pourrait représenter plus qu'un million de dollars, de l'argent qu'on me devrait parce que y'aurait le *back pay*; y'aurait des dommages; y'aurait tous les avantages qui seraient perdus. Donc, y'a, y'a pas de raison de croire - c'est monsieur Dearden lui-même qui dit ça. Okay? Donc, la, la,

la, la - à l'avenir - y'a pas de raison de croire maintenant, qu'à l'avenir, y'a pas la possibilité de payer. Y'a cette chose-là et y'a aussi - donc, y'a, y'a, y'a le, le congédiement qui est en appel. Monsieur Dearden, lui-même, vient de dire encore aujourd'hui que le transfert de la maison était ce que lui - ce qu'il appelle a *fraudulent conveyance*. Y'a rien qui empêche monsieur Dearden de poursuivre cette action-là pour essayer de prouver que c'était un *fraudulent conveyance* et pour essayer d'accéder à une certaine valeur de cette maison-là. Y'a rien qui l'empêche de faire ça et donc, ça, c'est une autre source de revenu possible à l'avenir. En plus, j'ai une pension et c'est - quand je prendrai ma retraite, ça sera une source de revenu. Y'a pas de raison que ça ne soit pas quelque chose que monsieur Dearden puisse aller chercher si, si - je pense qu'il est libre de - d'aller chercher ça.

INTERPRETER: In branch two, it is necessary to have a reason belief, a reasonable belief that the awarded damages will not be paid. Although it is true that currently, I have no employment and that presently, I have no money or resources, Mr. Dearden himself has argued before this very Court that the case, where I had been dismissed, was being appealed and if I were to be successful with

5 this appeal, my union brought this for
judicial review, if I were successful, Mr.
Dearden himself said to the Court that this
could represent over a million dollars but
money I would be owed, with back pay,
damages, all the benefits that had been lost,
so there is no reason to believe - it's Mr.
Dearden, himself, who said that. Going
10 forward, there's no reason to believe today
that there would be an incapacity to pay.
There's that point and there's also the
firing that's being appealed for dismissal.
Mr. Dearden, himself, has said again today
that the transfer of the home was a
fraudulent conveyance. There is nothing
15 that's precluding Mr. Dearden from going down
that road to try and demonstrate that it was
a fraudulent conveyance and try and access to
a certain value of that home. Nothing is
precluding him from doing that. So, that is
20 another potential source of money, going
forward. Moreover, I have a pension and when
I will retire, it will be a source of
revenue. There is no reason that this not be
something that Mr. Dearden could access that
25 I think he can - is free to go and access
that.

MR. DEARDEN: You can't enforce against a
pension.

LE TRIBUNAL : Merci.

DENIS RANCOURT : Ça, je le sais pas.

INTERPRETER: That I don't know.

THE COURT: Okay, well, I'm aware but it's - that's fine.

DENIS RANCOURT : Okay. Si c'est le cas, je suis heureux de le savoir, mais je - c'est, c'est moi qui se trompe.

INTERPRETER: Well, if that's the case, I'm happy to find out but I'm the one that's making...

LE TRIBUNAL : Mais prenez pas ça comme un avis légal.

INTERPRETER: Don't take that as a legal advice.

DENIS RANCOURT : Mais je prends ça comme le fait que monsieur Dearden ne va pas faire ça, mais il reste que il y a des sources de revenus à venir inconnu et important, inconnu et important et donc, ça enlève toute cette idée que je ne pourrai pas payer. Pour la question des coûts qui n'ont pas été payés à date, les coûts, ce n'est pas les dommages. C'est une question séparée de ce qu'on appelle en anglais *enforcement* et on ne peut pas - on ne peut pas sortir du jus d'une orange qui est complètement déshydratée. Si je n'ai pas d'argent, je n'ai pas d'argent et, et il y a donc nécessairement un problème pour aller chercher cet argent-là, vu que y'a, y'en a pas, mais ça, c'est une question pour la branche qui met en vigueur les ordres de la cour. Ce n'est pas quelque chose qui

est pertinent vis-à-vis des dommages qui -
c'est les dommages qui font partie du test à
savoir, est-ce que les dommages peuvent être
payés? Parce que ce sont les dommages qui
réparent la réputation de la plaignante et en
plus, dans ce cas-ci, la plaignante n'a
souffert rien par rapport aux coûts parce que
c'est l'université qui paye entièrement sa
cause. C'est quand même un point important.
Y'a pas de, de tord financier, aucunement, à
la plaignante vis-à-vis du fait que je ne
peux pas, en ce moment, payer les coûts.
Aucun. Donc, ce n'est absolument pas
pertinent. Mon argument est que la question
des coûts n'est pas pertinente parce que
c'est pas les dommages. C'est une question
de *enforcement* et en plus, la plaignante n'a
pas et ne - et probablement ne payera jamais
ces coûts-là. L'université a été claire sur
cette question-là. Donc, ça, c'est les -
c'est, c'est pour cette branche-là. Okay.
Maintenant, je voudrais adresser chacun - je
voudrais adresser les paragraphes dans
l'ordre - le *draft order* que monsieur Dearden
a signalé et adresser les raisons légales
que ces paragraphes, certains et la plupart,
sont inacceptables. Alors, je voudrais
adresser paragraphe par paragraphe. Je me,
je me, je me rapporte à le document que
monsieur Dearden nous a donné aujourd'hui,
qui s'intitule « *Order* » et qui le paragraphe

un commence : « *The defendant is permanently restrained from publishing or causing to be published...* », etcétera. Donc, est-ce que vous avez ce document devant vous, Monsieur le juge?

INTERPRETER: I will take it as the fact that Mr. Dearden won't be going after my pension but it remains that there are sources of revenues, unknown and important, important and unknown. So, this takes away this whole idea that I am incapable of paying with regards to costs that have been ordered against me but have not been paid. Costs are not damages. This is separate from what was called in English "enforcement" and we cannot squeeze juice out of an orange that has no substance. If I have no money, essentially, if there's a problem to go and get those monies, given that there is no money but that's a question for the branch that executes the - enforces the orders of the court. It's not pertinent for damages. It's the damages that are part of the test, as knowing whether the damages can be paid, because the damages are what we pay or the reputation of the plaintiff, and moreover, in this case, the plaintiff has sub - has - had no costs because the university has had to pay for everything. So, this is also an important point. There is no financial harm, in any way, to the plaintiff with regards to

5 the fact that I cannot pay costs, any of
them, and so it's absolutely not pertinent.
My argument is that the costs argument is not
pertinent because it's not a damage. It's
not an award. It's an enforcement issue and
moreover, the plaintiff is not - will not pay
or never pay those costs. The university was
unequivocal on that. So, that's for that
branch. So, now I would like to address each
10 of the paragraphs in the draft order that Mr.
Dearden has pointed to and I would highlight
why illegally, these paragraphs are not
acceptable. I want to go paragraph - I -
paragraph by paragraph. So, I now go to the
document that Mr. Dearden provided us that's
15 titled "Order". So, paragraph number one.
So, do you have that document before you?

LE TRIBUNAL : Je l'ai, merci.

INTERPRETER: Yes, I do have it, sir, thank
20 you.

DENIS RANCOURT : Merci. Alors, le
paragraphe un de cet ordre, il est vrai que
ce paragraphe un était quelque chose qui
était dans le *Statement of Claim*. C'est vrai
25 que c'était là. Par contre, ce que ça
voudrait dire ce paragraphe un, c'est que je
serais empêché de faire une discussion juste
et équilibrée du type médiatique de ce qui
c'est passé dans le passé. Donc, ça
30 m'empêche - ça m'enlèverait ma liberté d'agir
comme membre des médias en temps que

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blogueur. Ça, ce n'est pas une mesure qui est raisonnable dans le contexte où on doit équilibrer le droit d'expression et réparer les dommages dans une société démocratique parce que ça m'empêche la possibilité de le faire d'une façon équilibrée et qui n'est pas diffamatoire, qui ne serait pas diffamatoire. Par exemple, je n'aurais pas le droit de dire, en citant un morceau de phrase, « Ceci a été dit. Ce n'est - c'était ou ce n'était pas légitime de dire ça. Le jury a trouvé que c'était diffamatoire. », comme les médias vont faire, qu'ils ont peut-être déjà fait maintenant. Ils vont faire exactement la même chose. On m'empêcherait d'agir comme membre des médias en tant que blogueur, que la Cour suprême a dit les blogueurs ont les mêmes droits d'expression que les médias de masse. Donc, ça serait une mesure qui serait contre les principes d'expression libre de la Charte, de, de, de, d'appliquer cette mesure-là. Le paragraphe deux, le paragraphe deux n'est pas dans le *Statement of Claim*, aucunement. C'est quelque chose qu'on vient de, de me donner à la dernière minute. Je n'ai pas eu le temps de le préparer et ce n'est pas dans le *Statement of Claim*, aucunement. C'est complètement nouveau. C'est un *ambush* comme j'ai dit tantôt. Et il y a eu, par rapport à ce paragraphe deux, je vais juste le lire rapidement, « The

5 *defendant is permanently restrained...* » Le,
le paragraphe un, d'ailleurs, ça serait peut-
être mieux que je le lise parce qu'on vient
d'en parler. Est-ce que ça serait bien que
je lise le paragraphe un?

INTERPRETER: All right. So, paragraph one
of that order, it is true that this paragraph
was something in the Statement of Claim.

10 It's true it was in the claim, however, what
it would be - what it would equate to would
be to preclude me to carry on a just and
imbalanced discussion in the media as to what
has happened in the past. So, this would
confine me and remove me the freedom to act
as a member of the media as a blogger. That
15 is not a remedy that is reasonable in a
context where one has to balance freedom of
expression and reparation in a democratic
society, because this would stop me from
doing anything in a non-defamatory manner.
20 For example, I wouldn't have the opportunity
to quote a segment of a sentence that this
was said, this was or was not legitimate to
say that the jury found that it was
25 defamatory, as the media will do, as they may
have already done today, as they are going to
do the exact same thing. So, I would be
precluded from acting as a blogger like a
media, and that bloggers have the same
30 freedom of expression as mass media. So,
this would be a measure that would violate

the freedom of expression, *Charter* rights, to apply such a remedy. Paragraph two.

Paragraph two is not in the Statement of Claim, not at all. It is something that I've just been handed at the last minute. I have had no opportunity to prepare it. It is in no way in the Statement of Claim. It is an ambush, as I claimed earlier before you, and with regards to that, paragraph two, I'm going to read it quickly, "Is permanently restrained..." Paragraph one in fact, maybe it would be better that I read it. Would it be right for me to read it?

LE TRIBUNAL : Bien, on sait à quoi vous vous référez.

DENIS RANCOURT : Okay.

LE TRIBUNAL : Si vous voulez. Moi, vous adressez ça plus pour moi que pour qui que ce soit d'autre, mais on sait que c'est l'arbre...

DENIS RANCOURT : D'accord.

LE TRIBUNAL : ...l'ébauche de l'ordonnance, ça fait que...

INTERPRETER: Well, we know what you're referring to, so you're addressing that for me more than anything else and we know that it's there so....

DENIS RANCOURT : D'accord. Le, le, le paragraphe 2, c'est

INTERPRETER: All right, so, paragraph two...

DENIS RANCOURT: "The defendant is

5 permanently restrained from publishing or
causing to be published through the Internet
or by any other method or medium of
communication either directly or indirectly,
any defamatory statement about the
plaintiff." Okay?

10 DENIS RANCOURT : Ça, c'est très important
parce que pour trouver que quelque chose est
diffamatoire, il faut qu'il y ait une
détermination de la cour. Donc, là, on veut
barrer quelque chose avant de savoir ce que
c'est et avant qu'il y ait eu une
15 détermination à savoir si c'est diffamatoire
ou pas. Ça s'appelle, dans le, dans la
jurisprudence, quelque chose qu'on veut
barrer *in advance* et de faire une telle
chose, il, il - parce que dans cette cause,
il y a eu aucune trouvaille que quelque
chose, autre que les deux blogues dont on se
20 plaint dans le *Statement of Claim* a été
diffamatoire. Y'a eu aucune trouvaille dans
cette cause que y'a eu un autre écrit de ma
part qui est diffamatoire, que ces deux
blogues-là dont, dont on se plaint. Ça,
25 c'est important. C'est pertinent.

INTERPRETER: That's very important because
to find that something is defamatory, there
needs to be a determination from a court.
So, now we want to bar something before
30 knowing what it is and before there has been
a determination as to whether or not it's

defamatory. In jurisprudence, this is called something that wants to be precluded or barred in advance and to do so, because in this case, there have been - there has been no finding that other than the two blogs complained of, that - there was no finding in anything else, was - or another writing of mine that was defamatory other than the two blogs complained of. That's important.

That's pertinent.

LE TRIBUNAL : C'était les deux seuls devant le jury là, mais...

INTERPRETER: Well, those were the first - the only two presented to the jurors.

DENIS RANCOURT : Oui.

LE TRIBUNAL : D'accord.

DENIS RANCOURT : Et - donc, une injonction pour quelque chose *in advance*, sans savoir quel est le contenu de cet énoncé, en autre mot, faire taire quelqu'un avant de savoir ce qu'il va dire, c'est considéré, par la Cour d'appel du Québec, en tout cas, comme étant vraiment extrême et moi, je suggérerais que, au minimum, c'est le test du *interim injunction* qui doit s'appeler et même un test plus élevé que ça, parce que dans un *interim injunction*, au moins on sait qu'elle va - quel est le précis - quelle est la chose qu'on veut pas que la personne répète. Ici, on sait même pas. Okay? Donc, y'a, y'a, y'a vraiment un problème quand on veut faire une

5 telle chose. C'est, là encore, un abus, un
abus extrême de cet équilibre entre
l'expression libre et protéger la réputation
parce que c'est en avance, avant de savoir.
Je veux dire, on, on rentre - on rentre dans
un, un avenir dangeureux quand on commence à
faire ces choses-là et y'a - et c'est jamais
allé en appel cette question-là, à mon sens,
dans le contexte que celui ici. Le
10 paragraphe trois est aussi - là, je passe au
paragraphe trois de l'ordre, le *draft order*.
Le paragraphe trois dit...

15 INTERPRETER: So, an injunction in advance,
without knowing what is the content of - so
muzzling someone before knowing what they are
going to say is considered, by the Court of
Appeal of Quebec, in any event, as being very
extreme. And I would submit that at the
minimum, that the interim injunction should
20 be applicable and even moreover, the interim
injunction, it - at least you know what it is
that the person is not to repeat. Here, we
don't even know. So, there's really a
problem when you want to do something like
that. There again, it's an extreme abuse of
25 the struggle to find a balance between -
strike a balance between freedom of
expression and protect the reputation because
it's in advance. You're treading on
30 dangerous ground when you want to try and do
that, and that has never been appealed in

this context. Paragraph 3, and I'm now going to move on to paragraph three of the draft order. The paragraph states...

DENIS RANCOURT: "The defendant is ordered to permanently remove, take down the defamatory articles entered as Exhibit 3 and 4, and all articles he has published about the plaintiff, that include any of the statements the jury has found to be defamatory or that contain a hyperlink, or that contain a hyperlink to Exhibits Number 3 and 4. The defendant is ordered to permanently remove, take down these articles from any website or electronic database where they are accessible, within 15 days of this order."

DENIS RANCOURT : Alors, ça, Monsieur le juge, c'est exactement ce dont je parlais plutôt. Là, on veut enlever tous les articles qui auraient même juste un lien à un des articles qui étaient dans la cause. On veut enlever, indépendamment de ce que dise l'article, indépendamment - l'article en soit, pourrait être simplement un lien et il faudrait enlever cet article-là. On sait pas si l'article lui-même est diffamatoire. On ne sait rien. On veut un ordre global qui irait chercher tous les articles que j'ai pu écrire, qui, qui contiennent un lien et c'est important, Monsieur le juge. On demande pas simplement d'enlever le lien. Non. On en - on demande d'enlever l'article en entier

parce qu'il contient, en ce moment, le lien. On pourrait penser que si c'était raisonnable, l'alternatif, ça serait bien, enlever le lien. Non, c'est même pas ça. Allez chercher tous les articles qui, d'une façon ou d'une autre, ont un lien à un de ces articles-là et il faut les enlever complètement. Bien, la Cour suprême a dit qu'un tel lien, c'est comme citer quelque chose qui est dans une bibliothèque. C'est comme faire référence à un document qui serait dans une bibliothèque. Alors, chaque document qui cite quelque chose, il faudrait éliminer ce document. On est rendu dans une société Arolienne si on commence à, à émettre des ordres comme ça. Il n'y a pas - je pense - monsieur Dearden n'a pas cité de causes. Il n'y a pas de *case law* où on a fait une telle chose, où on a dit : « Il faut aller chercher tous les articles où y'a un lien à la chose qui a été trouvée diffamatoire. Il faut enlever ces articles-là. » Je, je, je n'ai pas vu dans ce que monsieur Dearden a présenté, un, une cause qui était de ce type-là et donc, je ne vais pas donner de contre-cause. Je ne vais pas le disputer. Monsieur Dearden avait la chance de présenter une telle cause. Il l'a pas fait. Le paragraphe quatre de l'ordre en question lit comme suit...

INTERPRETER: So, that, Your Honour, is

5 exactly what I was speaking of earlier. Now, we want to remove all the articles that would even have a hyperlink to one of the articles that was in this case. We want to strike, independently, of what the article says. The article could simply be a link and we would have to remove that article. We don't know if that article itself is defamatory. We don't know anything. We want an order, a global order, that would go and strike all the articles that I may have written that contain a link and that's important, Your Honour. We're not seeking to remove the link. No. We're seeking to strike the article in its entirety, because it contains the link. One could think that if it was reasonable, the alternative would be, well take the link out. No, it's not even that. Go and find all the articles, which in one way or another, are linked or have a link to those articles and you have to remove them or take them down completely. Well, the Supreme Court has stated that that kind of link is like quoting something that's in a library. It's like referring to a document found in a library. So, each document that quotes, would have to eliminate that document. So, we would be in a society, in a Aurelian society, if we start to grant those kinds of orders, that kind of blanket order. There is not - I don't think Mr. Dearden

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quoted any case law where that kind of measure would have been applied, where all the articles have to be found or that have a link to the defamation complained of. I didn't see, in Mr. Dearden - what Mr. Dearden presented any case that dealt with the matter that way. So, I don't - won't discuss that point. Mr. Dearden has a - had the opportunity to do so, he didn't. Paragraph four of the order in question is read as follows...

DENIS RANCOURT: "The defendant is ordered to assist the plaintiff in obtaining the removal or take down of the statements of the jury - of the statements the jury has found to be defamatory from Internet search engine caches such as Google, any electronic database where the defamatory statements are accessible and other websites operated by third parties."

DENIS RANCOURT : Cette demande ou une demande semblable était dans le *Statement of Claim*. Elle était dans le *Statement of Claim*, mais le - la plaignante n'a présenté aucune cause où on avait accepté de faire une telle chose parce que une telle chose est essentiellement un - flou et impossible. On demande d'assister à faire quelque chose.

Y'a beaucoup de problème avec ça.

Premièrement, je n'ai pas de pouvoir sur Google. Je n'ai aucun pouvoir sur Google. Pourquoi je serais - on me demanderait

d'assister à ce que Google enlève quelque chose alors que je n'ai pas de pouvoir sur Google. En plus, Google n'a - n'est - a probablement pas son serveur en Ontario. Donc, c'est même pas dans la juridiction de, de la cour. Monsieur Dearden a argumenté que Google était en, en, en - au - en - à San Francisco. Moi, j'ai dit que Google avait un serveur en Ontario. Monsieur Dearden a, a, a émit un contre-expert qui dit : « Non, non, non, c'est, c'est complètement faux. » Si on accepte ce que monsieur Dearden dit, ça voudrait dire que Google n'est même pas en Ontario. Il faudrait que - non seulement je n'ai pas de pouvoir auprès de Google, mais Google n'est même pas dans la juridiction de la cour. Alors, ce - ça va loin cette affaire. En faite, je n'ai pas de pouvoir sur aucun des tierces partis et en plus, qu'est-ce que ça veut dire « assist, assist »? Il faut spécifier. C'est un ordre général. Si, s'il - si la Cour ne dit pas ce que ça veut dire, qu'est-ce que ça veut dire? Ça peut vouloir dire n'importe quoi. Monsieur Dearden va tout voir - toujours pouvoir dire que je n'ai pas respecté l'ordre parce que je n'ai pas suffisamment assiste. Est-ce que y'a une barrière? Est-ce - qu'est-ce que ça veut dire? C'est complètement fou, par fou, flou. Donc, c'est un ordre qui n'a pas de sens et j'irais même

5 aussi loin de suggérer que probablement,
Monsieur le juge, vous n'avez pas la
juridiction de faire une telle ordre, qui est
- qui est aussi flou, non déterminée,
implique que je fasse des choses vis-à-vis
des tierces personnes sur lesquelles j'ai
aucun pouvoir. Je suis pas président de
Google ou rien de même et en plus, ah, là,
j'ai perdu mon fil de pensée. J'ai...

10 INTERPRETER: This request or any such
request was in the Statement of Claim. It
was in the Statement of Claim. However, the
plaintiff did not present any case, where
such a thing was accepted because such a
15 thing is essentially impossible and vague.
We are asking to help in doing something.
There are a lot of problems with this,
firstly. I have no power over Google. I
have no power over Google. Why am I being
20 asked to assist Google in removing something
when I don't have any power over Google?
Moreover, Google probably doesn't have its
server in Ontario. So, it's not even in the
jurisdiction of the court. Mr. Dearden
25 argued that Google was in San Francisco. I
am saying that Google had a server in
Ontario. Mr. Dearden brought an account
expert who said that it's completely false.
If we are accepting what Mr. Dearden says,
30 that means that Google isn't even in Ontario.
So, no - not only I have no power over Google

5 but Google isn't even in the jurisdiction of
this court. So, this case is - this matter
is going far. In fact, I have no power over
any of the third parties and anyways, what
does it mean to assist? You have to specify.
This is a blanket order. If the Court does
not explain what this means, what does it
mean? It can mean anything. Mr. Dearden is
10 always gonna be able to say that I did not
respect the order because I did not
sufficiently assisted [sic]. Is there a
limit? What does that mean? It's completely
vague, not crazy, vague. So, it's an order
that doesn't make any sense and I would go
even as far as saying that probably, Your
Honour, you don't have a jurisdiction to
15 issue such an order that is as vague as it
is, and not determined and asking me to do
something over third parties that I have no
power over. I'm not president of Google or
anything like that. Moreover, and I think I
lost my train of thought...

DENIS RANCOURT : J'ai...

25 LE TRIBUNAL : Vous disiez que la Cour a
probablement pas juridiction. D'accord.

C'est ça que vous disiez là dans le moment

INTERPRETER: You were saying that the Court
probably doesn't have any jurisdiction.

That's what you were saying.

30 DENIS RANCOURT : Oui, j'ai donné plus
d'information que ça, mais, oui.

INTERPRETER: Yes, I think I gave more information than that...

LE TRIBUNAL : Non, non, mais...

DENIS RANCOURT : Oui.

LE TRIBUNAL : ...c'est juste pour vous remettre dans votre...

INTERPRETER: Yes, just to help you with your train of thought.

DENIS RANCOURT : Merci. Merci. Je pense que de faire un ordre comme celle-là serait nouveau et nous enverrait dans une direction qui n'est pas souhaitable. Dans l'alternatif, si vous pensez qu'une telle ordre est méritée en loi, ce que, ce que j'argumente n'est pas le cas, il faudrait que cette ordre soit très spécifique; que ça soit des choses controllables et l'ordre dans, dans la façon qu'elle est présentée ici, n'est pas du tout spécifique et chacune des spécificités, il faudrait qu'on l'argumente du point de vue légal. Est-ce que cette spécificité-là est raisonnable et légitime en loi? Ça, c'était le paragraphe quatre. Le paragraphe cinq lit comme suit...

INTERPRETER: Thank you. I think that ensuring such an order would be something new and would take us in a direction that is not desirable. Alternatively, if you think that such an order is - has merit on the law, which I am not arguing in this case, this order would have to be very specific; things

5 that can be controlled. The order, the way it is presented here, is not specific. All the specifics must be argued from a legal standpoint. Are the specifics reasonable and legitimate in law? That was regarding paragraph four. Paragraph five reads as follows...

10 DENIS RANCOURT: "In the event that the plaintiff believes that the defendant is in breach of this order..."

DENIS RANCOURT : Alors, c'est important là. Il suffit, pour que cette clause soit satisfaite, que la plaignante croit - *believes* - c'est le seul test ici là.

15 INTERPRETER: This is important. It is sufficient for this - for the plaintiff believe - it's the only test here for this to be breached.

20 DENIS RANCOURT: "In the event that the plaintiff believes that the, that the defendant is in breach of this order, in addition to any remedy that may be available, the plaintiff can apply for an order requiring any person or company within the jurisdiction of this court, who has notice of this order, to remove or take down the articles containing the statements the jury has found to be defamatory, or that contains a hyperlink..."

30 DENIS RANCOURT : Là, encore, il suffit que ça contienne un *hyperlink to Exhibits 3 and*

4.

INTERPRETER: Once again, all you need is to have a hyperlink to Exhibits 3 and 4.

DENIS RANCOURT: "The plaintiff can also apply to expand or otherwise change the terms of this order on the ground that his - this order has failed or is failing to achieve one or more of its purposes."

DENIS RANCOURT : Okay. Ce paragraphe cinq n'était pas du tout dans le *Statement of Claim*. C'est complètement nouveau. C'est encore un autre paragraphe nouveau. J'ai pas eu le temps de - d'étudier la jurisprudence sur une telle affaire, que j'ai jamais vu avant. J'ai pas le temps de faire des arguments. C'est, c'est une ambuscade classique, comme j'ai dit au début, et même ce que je remarque en regardant ça, c'est que pourquoi est-ce que la Cour aurait besoin d'avoir cette ordre-là? Pour des raisons pratiques, je ne vois pas l'utilité d'une telle ordre. Est-ce que monsieur Dearden ne peut pas poursuivre en diffamation une tierce partie quand il veut? Est-ce que la plaignante ne peut pas faire ça? Oui. Y'a plein d'autres remèdes. Pourquoi est-ce que on veut mettre ici un ordre qui faciliterait, pour la plaignante, la possibilité d'avoir un autre ordre dans l'avenir? Je, je ne vois pas la logique légale de ça et je ne crois pas que c'est approprié d'avoir une telle

5 ordre qui est large et indéfinie. Là encore, c'est large et indéfinie. Il suffit que la plaignante croit que y'a eu un problème et elle peut, sans permission de la Cour, venir demander des ordres. Il suffit qu'elle croit. Elle a pas besoin de montrer une évidence à la Cour. Elle a pas besoin de faire un argument. Elle, elle croit quelque chose et elle peut se présenter devant la Cour pour demander un ordre. Je pense que c'est trop large et pas raisonnable et - mais je ne connais pas la jurisprudence là-dessus, mais c'est certainement pas dans le *Statement of Claim*. Et le sixième paragraphe, le sixième paragraphe est très court. Il lit comme suit...

10 INTERPRETER: Okay, so this paragraph five was not at all in the Statement of Claim. It's completely new. It's another new paragraph. I did not have the time to study the jurisprudence, the case law in such a matter that I've never seen before. I did not have time to prepare arguments. It's a classic ambush as I said in the beginning, but what I have noticed in reading this, is that why would the Court need to have this order? For practical reasons, I don't see the usefulness of such an order. It is -

25 can't Mr. Dearden sue a third party for defamation when he wants? Can't the plaintiff do this? Yes. There are lots of

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5 other remedies. Why do we want to have an
order here that would facilitate, for the
plaintiff, the possibility of having another
order in the future? I do not see the logic
behind - the legal logic behind this, and I
do not believe it's appropriate to have such
an order that is as wide and not defined. It
is sufficient for the plaintiff to believe
that there is a problem and the plaintiff
can, without permission of the court, come
and seek orders. It is sufficient her to
believe it, not to demonstrate evidence. She
believes something and she can come before
the Court to seek an order. I think that is
too wide and not reasonable. I do not know
the case law on this but it is certainly not
in the Statement of Claim. And the sixth
paragraph, the sixth paragraph is very short
and reads as follows...

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20 DENIS RANCOURT: "The defendant is restrained
from contacting or communicating with the
plaintiff, directly or indirectly, in any
way, by any method."

25 DENIS RANCOURT : Ce paragraphe six n'est pas
du tout dans le *Statement of Claim*. C'est
encore quelque chose de complètement nouveau.
On a, on a sorti ça. Moi, je l'ai, je l'ai
appris environ une heure qu'on voulait
proposer une telle chose. Donc, ce n'est pas
dans le *Statement of Claim*. J'ai déjà
30 expliqué à la Cour, Monsieur le juge, que y'a

eu un courriel où j'ai mis la plaignante en cc, au tout début de cette action, je, je, je pense que, si je me souviens bien, c'était à propos de demander comment médier une solution ou quelque chose comme ça. Je voulais être certaine [sic] que - bien, j'étais auto-représenté. Je connaissais pas la pratique et j'ai mis la plaignante en cc avec son avocat. Tout de suite, son avocat m'a informé qu'il avait un désir très fort que je ne communique pas directement avec la plaignante. J'ai toujours respecté ça. Y'a plus de trois ans et demi de ça. Y'a, y'a - j'ai - plus de trois ans. Y'a eu aucune communication avec la plaignante, aucune. Y'a aucune et en plus, je n'ai aucun intérêt à communiquer avec la plaignante, qui est une personne que je ne connais pas personnellement et qui est dans un milieu, la faculté de droit, où je n'ai jamais besoin de - d'être, même si j'étais réembauché. Y'a aucune - y'a, y'a aucune même possibilité d'être sur les mêmes comités ensemble à l'université, si j'étais réengagé. Y'a aucun contact personnel. Une fois, y'a - je, je sais pas combien d'années, j'ai vu une présentation publique par la plaignante. J'étais dans la salle. J'ai posé une question. Elle m'a répondu. C'est tout. Y'a pas, y'a pas à, à avoir une communication directe. Y'a aucune raison de croire que je

voudrais avoir une communication avec la plaignante. Donc, ça, c'est des circonstances entièrement différentes du cas *Ashley* [sic] *Verdun* dont monsieur Dearden a parlé parce que dans le cas *Ashley* [sic] *Verdun*, y'avait cette proximité. Y'avait ce contact continuel. Y'avait, y'avait monsieur Verdun qui se présentait à des comités pour les personnes qui investissent dans la compagnie où monsieur *Ashley* [sic] était un, un, un exécutif puis essayait de dire des choses puis, etcétera. Les - c'est pas du tout la même chose. Et là, j'ai quelques autres points. Juste recueillir ma pensée. Ah, oui, okay, une seconde. Oui.

INTERPRETER: This paragraph, paragraph six is not at all in the Statement of Claim. It's once again something completely new. I just learned about this an hour ago that such a thing was going to be proposed. So, it is not in the Statement of Claim. I already explained to the Court, Your Honour, that there was one email where I cc'd the plaintiff at the very beginning of this action. I think, if I remember well, it was regarding - asking a solution or a - I wanted to be sure - I was self-represented. I did not know what the practice was and I cc'd the plaintiff with her counsel and immediately, her counsel informed me that he had a very strong desire for me not to communicate with

the plaintiff and I always respected this. This was three and a half - more than three and a half, in any case, more than three years ago. There was no communication with the plaintiff. None. Moreover, I have no interest in communicating with the plaintiff, who is a person that I don't know personally and who is in an environment, the faculty of law, where I never need to be. Even if I was rehired, there is no possibility of us being on the same committee if - at the university, if I were to be rehired, there is no personal contact. Once only, I don't how long ago, there was a public presentation. I was in the room and the - with the plaintiff, I asked a question and she responded and that's it. So, there's no need to be in direct communication or to even to believe that I would have any kind of communication with the plaintiff. These are circumstances that are entirely different from the case *Ashley [sic] Verdun*, that Mr. Dearden made - refer to because in *Ashley [sic] Verdun*, there was a proximity. There was a continued contact. Mr. Verdun sat on committees with people who invested with a company where Mr. Ashley was an executive, and tried to say things and so forth. And this is not the same thing at all. And I have a few other points. I'm just going to collect my thoughts. Yes, one second.

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DENIS RANCOURT : Monsieur Dearden a parlé des exhibits R, Monsieur le juge, et ces exhibits R incluent des articles médiatiques, dont des articles du journaliste, Don Butler, qui était devant vous à quelques reprises, qui vous a fait des demandes, etcétéra, et qui a écrit au sujet de cette cause et qui a dit dans ses écrits des opinions que je lui ai données et monsieur Dearden voudrait que de tels exhibits soient une évidence qui soutient son - sa demande de *permanent injunction*, mais y'a un problème avec ça, qui, qui sont les suivants [*sic*] :

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premièrement, monsieur Dearden m'a informé que vous lui avez donné la permission que je donne librement mon opinion et il m'a dit ça et...

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INTERPRETER: Mr. Dearden spoke of the R exhibits, Your Honour, and those R Exhibits include media articles among which the article of Don Butler, that appeared before you and made requests to you et cetera, and who wrote about this matter and that said, in his writings, opinions that I shared with him and Mr. Dearden would want that those kind of exhibits be in support of a permanent injunction. Well, the problem is the following: first off, Mr. Dearden advised me that you had given him permission that I give freely my opinion. He told me that.

MR. DEARDEN: What? Can you repeat that,

please? I don't think...

DENIS RANCOURT : J'ai, j'ai...

MR. DEARDEN: ...it came through properly.

DENIS RANCOURT : ...j'ai, j'ai, j'ai dit que monsieur Butler m'a communiqué que Monsieur le juge avait la permission que je lui donne mes opinions...

INTERPRETER: I said that Mr. Butler told me that His Honour had given the permission that I give my...

LE TRIBUNAL : Il m'a demandé s'il pouvait vous interviewer puis j'ai dit : « Oui, si vous voulez l'interviewer, vous pouvez l'interviewer. » C'est ce qui a été dit.

INTERPRETER: He asked me if he could interview you. That's what I said, "Yes, if you want to interview him, that's what you can do." That's what was said.

DENIS RANCOURT : Je vous dis ce qu'il m'a dit. Je vous, je vous...

INTERPRETER: I'm telling you what he said.

LE TRIBUNAL : Non, non, mais je vous dis ce que je lui ai dit.

DENIS RANCOURT : Oui.

LE TRIBUNAL : C'est de ça, on...

INTERPRETER: No, no, I'm telling you what I told him, period.

DENIS RANCOURT : Et, et ce que vous avez dit est sur le procès verbal que, que...

LE TRIBUNAL : D'accord.

DENIS RANCOURT : ...je n'ai pas devant moi

et ce que monsieur Don Butler m'a dit, je vous le dis en ce moment. Donc, il m'a dit ça et sous cette information-là, j'ai, j'ai parlé librement et monsieur Butler m'a dit que il avait été en cour. Donc, il était au courant de - des ordres que vous aviez donnés. C'est clair et donc, il a écrit, en connaissance de ce qui avait été dit en cour, alors que moi j'étais pas là, et il a écrit ce qu'il a écrit. Maintenant, monsieur Butler a aussi, dans son article et on pourrait aller voir l'article, il a rapporté ce qui avait été dit en cour en l'absence du jury. Il a rapporté un élément qui a été dit en cour en l'absence du jury. En particulier, de sa propre personne, monsieur Butler a rapporté - il, il me citait pas. Il l'a rapporté de sa propre personne que Monsieur le juge, vous aviez éliminer ma défense de *abuse of process* en, en voir dire quand que le jury n'était pas présent. Il l'a rapporté ça dans son article. Alors, je vois mal comment un journaliste, de grands calibres, de grandes éthiques professionnelles, de grande expérience, peut prendre des informations de la cour à savoir quelle est l'ordre précise qu'il faut suivre, obtenir des réponses, m'interviewer et écrire l'article qu'il a écrit sans que, je crois que ce qu'il m'a dit par rapport à, à ma permission était vrai et sans que je crois

quelles étaient les circonstances de communication. Ça, c'est des faits importants, à mon sens par rapport aux exhibits numéro R. Monsieur Dearden a parlé des, des documents relatifs au *voir dire*, qui ont eu lieu en absence du jury. Les documents en question sont tous les documents qui ont été émis dans le *voir dire* en question, tous les représentations de la plaignante et tous les représentations du, du défendant. Il y a aucune possibilité, en présentant de façon égale et équitable, tous les représentations qui ont été faites en cour ouverte devant le public, puissent être conçus comme quelque chose qui pourrait causer un préjudice et en plus, je ne vois par quel mécanisme cela pourrait causer un préjudice et en plus, vous avez donné l'instruction au jury, et j'étais présent pendant ça, vous avez donné l'instruction au jury qu'il ne regarde pas l'Internet. J'étais là pendant cette instruction-là et qu'il ne fasse pas leur recherche indépendante. Il n'y a pas de raison de croire qu'il ferait une telle chose quand vous leur avez donné une instruction très claire du contraire. Il n'y a pas de raison, que moi ou quelqu'un d'autre suppose que les membres du jury vont faire - vont désobéir à vos instructions claires et d'accepter ce que monsieur Dearden propose, ça serait de

trouver les membres du jury comme ayant -
comme étant fautifs et comme étant des
personnes qui ne respectaient pas les
directives de Monsieur le juge. Et ça, je
trouve ça contradictoire et contraire à
l'esprit de la loi. Monsieur Dearden a parlé
de - à son ongle 14, d'un article que j'ai
écrit qui s'intitule « *The crisis of access
to justice in self-represented litigants as I
see it.* » Et je, je vois mal comment cet -
un tel article où j'utilise ma liberté
d'expression pour critiquer le système légal
et pour donner mon opinion personnelle - dans
le titre, ça dit « *as I see it* » sur ce que
j'ai subi dans le contexte de cette action et
pour donner mon opinion personnelle et pour,
pour, pour, pour dire ce qui est déjà dit
publiquement et de faire le point sur comment
j'ai vécu et je vois le traitement des
personnes autoreprésentées devant la cour, je
vois mal comment ça pourrait avoir un impact
sur le jury parce que le jury a été informé
de pas consulter l'Internet, que le - dans le
titre, y'a rien qui suggère cette cause
Rancourt St. Lewis. Y'a, y'a pas de - y'a
rien qui suggère cette cause et c'est mon
expression libre où je critique - y'a, y'a
rien là-dedans qui critique la plaignante.
Y'a rien dans cet article qui critique la
plaignante, pas un mot à propos de la
plaignante ou qui critique la plaignante.

5 C'est purement une critique du système et des
choses que j'ai expérimentées. Donc, c'est
une question d'expression libre des plus
fondamentale. Monsieur Dearden a parlé de
son onglet numéro 12 et c'est un article
blogue que j'ai écrit qui s'intitule « *It is
time for the tort of defamation to be
abolished.* » Ça, c'est l'onglet 12, Monsieur
le juge, si vous voulez le regarder.

10 INTERPRETER: And what you told him is on the
record, so - that I don't have before me but
what Mr. Butler told me, I'm telling you what
he told me. He told me that and given that
information, I spoke freely with Mr. Butler
and Mr. Butler told me that he had appeared
15 before the Court. He was aware of the orders
that you'd given and it was - he wrote, in
full knowledge, of what had been said in
court whereas I wasn't there and he wrote
what he wrote. Now, Mr. Butler, also, in his
20 article, and we could look at the article.
He reported what had been said in court, in
the absence of the jury. He reported an
element that was said, in the absence of the
jury, notably of his own person, Mr. Butler,
25 reported and he wasn't quoting me. He was
reporting by - of his own that Your Honour
had eliminated my defence of abuse of process
in *voir dire*, when the jury was not present.
30 He reported that in this article. So, I
don't see how a journalist of high calibre,

with professional ethic, very experienced, can take information as to know what the order is to be followed, obtain answers, interview me and write the article that he wrote without, that I believe, as to he what - told me about my permission was right or true, and that those were the context. That was the context of the communication. Those, to me, are important facts with regards to the R exhibits. Mr. Dearden spoke of documents pertaining to the *voir dire* that were held in the absence of the jury. The documents in question are all documents that were produced in the *voir dires*, all these submissions of the plaintiff and all the defendant's submissions. There is no possibility in presenting, in an equal manner, an equitable manner, all the submissions made in open court, before the public, could be thought of as something possibly prejudicial and moreover, I do not see my mechanism this could create a prejudice. And, moreover, you gave the instruction to the jury and I was present for that. You gave the jury the instruction that they not go on the Internet. I was there when you gave that direction and that they were not to make their own independent research. There's no reason to believe that they would do that when you gave them a clear instruction to the opposite. There's no

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reason for someone like myself or anyone else
to suppose or to think that the jurors would
disobey to a clear instruction and to accept
what Mr. Dearden is proposing would be
tantamount to finding the jurors at fault and
thinking of them as individuals who did not
follow your direction. That, I find to be
contradictory and contrary to the spirit of
the law. Mr. Dearden spoke at tab 14 about
an article that I wrote titled...

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DENIS RANCOURT: "The Crisis of Access to
Justice and Self-Represented Litigants as I
see it."

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INTERPRETER: And I can't conceive how such
an article, where I use my freedom of
expression to criticize the legal system and
to give my personal opinion - in the title,
it says, "As I see it", as to that I have
been subjected to in the context of this
litigation and to give my personal opinion
and to say what has already been said
publicly and to do - to share how I view the
experience of a self-represented litigant
before the courts, I don't know how this
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could prejudice the jury because the jury was
advised to not consult the Internet. In the
title, there's nothing that suggests this
matter, Rancourt, St. Lewis, nothing suggests
this case and it's my free expression where I
criticize. There's nothing in that, that
criticizes the plaintiff, nothing complains -
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5 criticizes the plaintiff, not a single word about the plaintiff. It's purely a criticism of the system and the things that I have experienced. So, this is a matter of most fundamental freedom of expression. Mr. Dearden spoke of tab 12, and it's a blog article that I wrote titled...

DENIS RANCOURT: "It is Time for the Tort of Defamation to be abolished."

10 INTERPRETER: That's tab 12, Your Honour, if you want to look at it.

LE TRIBUNAL : Oui, oui, je suis au courant.

DENIS RANCOURT : Okay.

15 LE TRIBUNAL : Je l'ai déjà vu à quelques reprises.

INTERPRETER: Yeah, yeah, I'm aware. I've seen it a number of times.

20 DENIS RANCOURT : Okay. Alors, ma position que j'ai exprimé publiquement, c'est que le délit de diffamation présuppose malveillance, présuppose dommage et présuppose vérité et que ces présuppositions-là, sans besoin de preuve, ne sont pas compatibles avec la liberté d'expression dans une société moderne. J'ai le droit à cette opinion.

25 J'ai le droit de dire que ces présuppositions-là devraient être changées ou abolies par des lois et c'est ce que je dis et je vais continuer à le dire, mais je vois mal comment mon opinion sur ces questions-là peut être vue comme de l'évidence que je vais

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5 continuer à diffamer quelqu'un. Ce sceau de
logique est un abus de logique. Y'a pas de
raison de penser que parce que je trouve le
common law de la diffamation pas adapté à
notre société moderne et que je vais demander
et je vais participer avec d'autres parce que
y'a des lois qui changent ça, du même type
que les lois du - dénommé *slap suit*. Les
gens qui font de...

10 INTERPRETER: All right. So, my position
that I've explained publicly is that the tort
of defamation presupposes damage, malice and
truce and that those presuppositions, without
the support of evidence, that is not
15 compatible with the freedom of expression in
a modern society. I have a right to that -
those assumptions have to be abolished by
law. That's what I said and I will continue
to say so but I cannot see or conceive how my
opinion on those questions can be perceived
20 as evidence that I will continue to defame
someone. This leap of logic is an abuse of
logic. There is no reason to think that
because I find the defamation common law to
be improperly adapted to our modern society
25 and that I will interchange with others to
change the legislation, there's a thing
called *slap suit* as well.

MR. DEARDEN: No, there isn't.

30 DENIS RANCOURT : Non, j'ai pas dit que y'en
avait. J'ai dit que j'allais demander. Et

les gens qui font des opinions personnelles et de la politique pour faire venir des lois de ce type-là, qui délimitent le *common law* de la diffamation ne sont pas plus susceptibles de diffamer les gens que n'importe qui d'autre. C'est complètement, je dirais ridicule d'avancer une telle chose. C'est pas parce que on accepte pas, qu'on critique. C'est pas parce qu'on critique la loi telle qu'elle existe pour, pour vouloir la changer en tant que membre de la société, en tant que membre actif de la société, qui veulent changer des choses pour le mieux. C'est pas parce qu'on fait ça que ça veut dire qu'on est prêt à briser la loi. Y'a, y'a, y'a - c'est - y'a, y'a aucun lien. Une, une personne peut argumenter contre n'importe quelle loi, mais ça ne veut pas dire qu'ils sont prêts à briser cette loi-là.

INTERPRETER: I didn't say there was. I said I was going to ask for it. People who make policy - politics and personal opinions to limit the common-law defamation, they're not more susceptible of defaming anyone else, than anyone else. It's completely ridiculous. It's preposterous to advance that. It's not because you don't accept that criticism be levelled against the law, that you want to change it as a member of society, as an active member of society, who wants to improve things. It's not because we do that,

that it means that we are going to violate the law. There's no link. A person can argue against any law but that doesn't mean that they're going to break the law.

LE TRIBUNAL : J'ai compris votre point.

DENIS RANCOURT : Merci.

LE TRIBUNAL : Continuez au prochain, s'il vous plaît.

INTERPRETER: I've understood your point.

Next point, please.

DENIS RANCOURT : Merci. Monsieur Dearden a fait des arguments et il a utilisé l'onglet 13, en autre, comme faisant partie de son argument, qui est un article par un monsieur Lendman, pour dire que il y avait une campagne menée par les amis - il a utilisé ce mot-là en anglais, du défendant. C'est, avec tout respect, un fantasma de la part de monsieur Dearden, de présupposer sans preuve que tous les personnes qui écrivent à propos de cette chose-là de façon négative ou autre, sont des amis et travaillent dans le contexte d'une campagne. C'est - il, il peut y avoir des personnes que je connais qui écrivent des choses, comme il peut y avoir des personnes que je connais pas, y'en a plusieurs qui écrivent des choses.

INTERPRETER: Mr. Dearden argued, using Tab 13, as part of his arguments, an article by Mr. Lendman, to say that there was a campaign led by the friends. He used this word in

English, of the defendant. Respectfully, this is just a fantasy of Mr. Dearden to assume, without any evidence, that all the people who are writing about this thing, in a negative way, are friends. They work - and that they work in - as part of a campaign. There could be people, who I know, who write things as there are people who I don't know who write things.

LE TRIBUNAL : Non, mais là, on parle de monsieur Lendman.

DENIS RANCOURT : Pardon?

INTERPRETER: I'm sorry?

LE TRIBUNAL : Je veux dire on parle de monsieur Lendman?

INTERPRETER: We're talking about Lendman?

DENIS RANCOURT : Oui. Monsieur Lendman est quelqu'un que je n'ai jamais rencontré en personne, avec qui j'ai très peu de contact et il choisit d'écrire des choses à mon sujet. Il est libre de le faire. Il est entièrement libre de le faire. Si monsieur Dearden a un problème avec monsieur Lendman, il devrait l'adresser avec les recours qu'il a vis-à-vis de monsieur Lendman. D'aller chercher que je peux contrôler des tierces personnes simplement parce que je les connais ou que y'a eu un contact avec eux, c'est vraiment étirer les choses. Monsieur Dearden a toutes sortes de théories sur un espèce de campagne, etcétera, qui ignore le fait que

les personnes sont des personnes
indépendantes. Il voudrait que madame
McKinney, qui a été membre du Congrès pendant
12 ans aux Etats-Unis, soit une marionnette
de ma part. Il voudrait nous faire croire
ça. Il voudrait nous faire croire que cette
femme a fait une pétition pour, pour dire ce
qu'elle a dit dans sa pétition et, et que
c'est moi qui fait ça. C'est comme si c'est
moi qui le faisais; que ce n'est pas une
personne indépendante et ça, je vous
demanderais, Monsieur le juge, de considérer
que ces théories-là sont farfelues, sont sans
preuve et sont des fabrications.

INTERPRETER: Mr. Lendman is somebody who I
never met personally. I have very few
contacts with him. He chooses to write
things about me. He is free to do so. He is
fully free to do so. If Mr. Dearden has a
problem with Mr. Lendman, he should address
it with the remedies he has towards
Mr. Lendman. To say that I can control third
parties simply because I know them or that
there was a contact with them, is truly
stretching things. Mr. Dearden has all sorts
of theories on some sort of campaign and
such, ignoring the fact that persons, people
are independent individuals. Madam McKinney,
who was member of the Congress for 12 years
as a - as my puppet, that's what he wants us
to believe. He would like us to believe that

5 this woman had a petition going to say what
she said in her petition and that it was me
doing it, as if it was me who was doing it,
that it was not an individual, an independent
individual, and I would ask you, Your Honour,
to consider these theories as being without
any evidence and simply fabrications and
farfetched.

10 LE TRIBUNAL : On va prendre 15 minutes.

INTERPRETER: We will take a fifteen-minute
break.

(3:24 p.m.)

R E C E S S

15 U P O N R E S U M I N G : (3:47 p.m.)

LE TRIBUNAL : Oui, monsieur Rancourt.

20 DENIS RANCOURT : J'avais, j'avais presque
fini, Monsieur le juge, quand on a pris le
break donc, j'en ai pas pour longtemps, juste
quelques minutes. Alors, j'aimerais conclure
avec juste les quelques points suivants...

25 INTERPRETER: I was almost done, Your Honour,
when we took the break so I don't have much
further. I have just a few moments. So, I'd
like to conclude with just a few following
points...

LE TRIBUNAL : Répétez les pas, par exemple.

DENIS RANCOURT : Non, c'est...

LE TRIBUNAL : Répétez pas vos points.

30 DENIS RANCOURT : Non.

LE TRIBUNAL : Assurez vous.... Okay.

D'accord.

INTERPRETER: Don't repeat them. Don't repeat your points. Ensure that...

DENIS RANCOURT : Non, c'est pas de la répétition. Je crois pas. C'est - mais c'est des points de conclusion.

INTERPRETER: No, it's not repetition, Your Honour. I don't think so, but these are conclusion points.

LE TRIBUNAL : D'accord.

INTERPRETER: All right, go ahead.

DENIS RANCOURT : Au début de ce procès, monsieur Dearden avait argumenté que le fait que j'avais fait 30 motions en soit, c'était de l'évidence de la malveillance. Je me suis opposé à ça et vous avez eu raison, Monsieur le juge, de, de dire que c'était pas le cas puis que si y'avait des événements dans ces motions-là qui étaient très spécifiques, que ils pouvaient être soulevés dans le procès. De la même façon, pour argumenter que y'a un risque que je diffame encore la plaignante, monsieur Dearden a fait le [sic] même sorte d'argument en l'emporte-pièce en disant qu'il y a 68 articles blogues que j'aurais écrit, qui sont de l'évidence que je voudrais, à l'avenir, diffamer la plaignante et je propose, Monsieur le juge, que c'est exactement le même type d'argument monsieur Dearden avait fait avec les 30 motions. C'est-à-dire, c'est un argument en l'emporte-

pièce où il utilise le nombre sans regarder les choses spécifiques, où il parle de 68 et de numéro magique de 68, mais sans aller voir chacun de ces articles, est-ce qu'ils sont équilibrés? Est-ce qu'ils sont raisonnables? Est-ce que, en faite, c'est de la diffamation? Rien de ça. Juste il continue à en parler. Et ça, à mon sens, si on accepte cet, cet [sic] type d'argument en l'emporte-pièce, on, on s'ouvre une injustice assez fondamentale. Je propose, en conclusion, qu'il n'y a pas d'évidence devant la Cour que j'aurais l'intention, à l'avenir, de diffamer la plaignante. Il n'y a pas d'évidence qui soutient cette proposition-là de façon raisonnable et en plus, je peux vous dire que d'avoir subi ce procès et d'avoir subi un ordre de dommages de 350 000 \$ et un risque de - d'outrage au tribunal et de la prison et de tout ce que vous voulez, que j'ai - c'est très - c'est, c'était même pas nécessaire parce que j'avais jamais l'intention et j'ai jamais dit une chose autre que les opinions que j'ai exprimées dans les deux blogues en question. Je n'ai jamais dit autre chose que ça. J'ai - je suis jamais sorti des contraintes des opinions que j'avais exprimé dans les blogues dont on se plaint. Jamais. Donc, il y a aucune raison de croire que je voudrais diffamer la plaignante à l'avenir et il y a toutes les

raisons de croire que j'ai - que, que ce que j'ai subi, de toute façon, même si j'en avais eu, à un moment donné, et c'est pas le cas, un [sic] intention comme ça pour ce que j'ai subi est largement suffisant et en plus, il ne faut pas oublié que monsieur Dearden ne perd en rien son remède de me repoursuivre en justice. Il n'a jamais perdu ce remède-là. Si le moindrement je fais un énoncé diffamatoire nouveau, un nouvel évènement de, d'énoncé diffamatoire, monsieur Dearden peut - la plaignante, c'est-à-dire, peut choisir de me ramener devant les tribunaux et je peux vous dire qu'avec le jugement qui vient d'avoir - de, contre moi, que y'a pas un jury ou un juge qui verrait ça d'un très bon œil et ça, j'en suis parfaitement conscient. Donc, y'a toutes les raisons - ce, ce n'est pas un cas - ce que je, ce que je, je conclus, c'est la chose suivante : ce que vous avez - ce qui a devant la Cour n'est pas un cas, aucunement, où ça serait raisonnable d'avoir une injonction comme celle que propose monsieur Dearden et au contraire, est un cas où le jury a pleinement considéré la question des dommages à la réputation et a déjà donné un verdict complet sur cette question-là en terme de dommages. C'est tout. Merci.

INTERPRETER: At the beginning of this trial, Mr. Dearden had argued the fact that I had

made 30 motions in - of itself was evidence of malice. I oppose that and you were right Mr. - Your Honour, to indicate that that wasn't the case and that were - if there were events in those proceedings that could - were very specific, could be raised during the trial. In an analogous way, the argument that I would defame in a continuous fashion the plaintiff, Mr. Dearden made the argument that there are some 68 blog articles that I've written that are evidence that I would, in the future, would want to defame the plaintiff and I submit to you, Your Honour, that this is the exact same kind of logic argument that Mr. Dearden had made with the 30 motions. It's a hole bow argument without looking at things in detail, where we look at magic numbers of 68 but without looking at each of those articles to see if they're balanced, if they're reasonable, is an indeed defamation, nothing of the sort. He just continues to speak of this number and that in my opinion, if you allow that argument, that hole bow argument, you are opening up yourself to an injustice, a fundamental injustice. I submit, in conclusion, that there is no evidence before the Court that I would intend to defame in the future the plaintiff. There's no evidence that supports that proposition reasonably and, moreover, I can tell you that having gone through this

trial, having been ordered to pay an award of \$350,000 and the potential citation for contempt of court and jail time et cetera, it's very - it's not even necessary because I never intended - I never said anything else, other than the opinions that I've expressed in the blog, the two blogs in question. I've never said anything else, other than those. I never went outside the boundaries of the opinions I'd expressed in the blogs complained of, never. So, there is no reason to believe that I would want to defame the plaintiff in the future and that there is - all the reasons in the world to believe that what I have been subjected to in any event, even if I had, at any point in time, such intent, which I don't, what I've gone through is, in a large measure, sufficient a deterrent and we mustn't forget that Mr. Dearden is not precluded from suing me. He's never lost that opportunity. If I utter a defamation again, a new instance of defamation, Mr. Dearden - the plaintiff can choose to undertake a new action and I can tell you that, given the award pronounced against me, there is not a jury or a judge that would view that in a positive light. That, I am entirely conscious of. So, all those reasons, it's not a case. What I'm concluding is the following: what you have before the Court is not a case, in no way,

Reply submissions by Mr. Dearden

5 where it would [sic] reasonable to grant an injunction, as proposed by Mr. Dearden, and to the contrary, it's a case where the jury fully considered the award for damages to the reputation and rendered a complete verdict on that issue as to damages. Thank you.

LE TRIBUNAL : Merci.

THE COURT: Any reply?

10 REPLY SUBMISSIONS BY MR. DEARDEN:

15 MR. DEARDEN: Yeah, Your Honour, let me just deal with what you just heard there. Mr. Rancourt is saying I never lost the opportunity to sue him. Well, first of all, it's Professor St. Lewis never lost the opportunity to sue him. You recall Tab 45 of the compendium has all - or just has some of the take down notices of defamation. Mr. Rancourt couldn't recognize a defamatory statement he wrote, if it was to save his life. He doesn't know what defamation means We decided to use all of his further defamations after Exhibits 3 and 4, as evidence of his malice and it was before the jury and they found him to be malicious and he also completely misses the point, Your Honour, that the permanent injunction order that we're seeking and the mandatory order, is only talking about defamatory statements. So, he's made the representation to the

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5 Court, repeatedly today, that he's not going
to defame Professor St. Lewis in the future.
Then, he shouldn't have any problem
whatsoever with this order because it's
restricted to defamatory statements. He
should have no problem with that. He
mentioned to you, Your Honour, his, you know,
"Tort of Defamation to be Abolished" article
and the presumptions of damages falsity in
malice. His attitude, Your Honour, and it's
10 in the evidence, I'm not repeating it, has
been that he has freedom of expression and
that gives him a licence to defame and smear
people. That's what he thinks freedom of
expression means. He thinks that he can say
anything about anybody, any time, on his blog
because he's a blogger, and he can't. We
have laws of defamation, Your Honour, and
those presumptions, I was counsel in three of
those cases where those presumptions were in
play, the Quan and Cusson case, the Grant and
20 Torstar case, and then the one he keeps
repeating to you about the hyperlinks, a
hyperlink isn't a publication. I intervened
in that case, it's called Crookes and Newton,
25 and those presumptions were in play and the
balance of reputation verse - versus freedom
of expression was in play and the Supreme
Court of Canada, in all three cases, have
upheld those three presumptions. Mr.
30 Rancourt dislikes those presumptions very

much because he can't smear people the way he wants to, but too bad. It's the law in this country. It's the law in this country and he defamed to the tune to \$350,000, according to the jury today. He says that, Your Honour, that I said that Cynthia McKinney was my puppet. I've never ever said that about Cynthia McKinney and what I did so - say point blank was, she sure is no independent expert witness and the petition that she's got going, which Mr. Rancourt wrote about post - post leaving this trial and while the jury was sitting, that is contemptuous and it shows attitude. All of this stuff, Your Honour, all of these R exhibits go to his attitude to assist you in deciding whether there's a likelihood that this defendant is going to continue to defame Professor St. Lewis, and I put it to you, Your Honour, that what you just heard him say, the last two hours, is Exhibit A of a demonstration that he absolutely intends to defame Mr. - Professor St. Lewis in the future. This is a person who calls this Court, a Kangaroo Court, and you never gave permission to Don Butler to allow Mr. Rancourt to call you running a Kangaroo Court. He never mentioned Kangaroo Court the morning that he made his statement in French. So, how could you give Don Butler permission to let him say, while the jury was still sitting, that you were

running a Kangaroo Court, but again, it's the attitude that I'm talking about that's demonstrated in those R exhibits, that he thinks that he can write while the jury is sitting still, all of the things that are in the R Exhibits. He can't. He's not allowed to do that. If somebody that so holds the judges at 161 Elgin Street, in contempt, that he's not gonna listen; he's not gonna stop defaming Professor St. Lewis, unless hopefully, there's a permanent injunction in place that if he doesn't abide by it, there can be criminal consequences for breaching a court order. That's who we are dealing with here. Now, he began his argument, Your Honour, by talking about the Grant and Torstar case and how the Court did deal with, you know, a need to balance and re-twig the law of libel to take the pendulum more towards protecting freedom of expression then reputation. He's dead wrong on what he's telling you that, that decision stood for - when a jury awards damages, Your Honour, yes, it is to compensate Professor St. Lewis and you note that this order isn't asking Mr. Rancourt to apologize. Okay? That's what the damages cover is that he failed to apologize and retract the statements so, he now has to pay \$350,000 because he's not apologizing. The apology now, is in the form of the media hopefully reporting that

Professor St. Lewis just won a damage award and in particular, a \$250,000 aggravated damage award against Mr. Rancourt. So, the Grant and Torstar case that he was referring to, he's got it completely wrong and again, I repeat, this order is not seeking a mandatory order compelling him to retract or apologize. It's an order to stop him defaming Professor St. Lewis and I'll summarize this. You heard a whole bunch of argument about, you know, what the media are doing and that what Don Butler wrote or the National Post wrote or the Citizen wrote, giving an overview of this case, can't be used against him in terms of the permanent injunction, and why should he be treated any differently if they can do that and he, as the great blogger, can't? Here's the point, Your Honour, that he still doesn't get, in a libel action, the conduct of the defendant can and will be used against the defendant before the libel and before the trial, after the trial, right up to the point where the jury renders its verdict. That's what he doesn't get. We're talking about his conduct, that he wrote to reporters to get them to report on his Statement of Defence and all the defamatory statements that are in the Statement of Defence. It's not what they wrote is the issue, it's that he emailed them, that he reached out to try to extend the number of people that would know that he

5
called Professor St. Lewis a "house negro",
which he just got found to be defame -
defamatory and 350,000 damages for. You
recall, Your Honour, that the day after he
sent out one of his emails, that Steven
Lendman, Maniac, writes Professor St. Lewis
directly. It's in the record. She - he
writes her directly and defames her.

10
DENIS RANCOURT : Monsieur le juge, est-ce
que c'est de la réponse? C'est, c'est - me
semble c'est pas un *reply*. Monsieur Dearden
est en train de répéter des choses qu'il a
déjà dit.

15
INTERPRETER: Is this the reply, Your Honour?
I don't - it doesn't seem to be a reply. I
think he is repeating something.

20
LE TRIBUNAL : Oui, je pense que ça touche à
ce que vous avez dit concernant les gens qui
sont, soit associés ou pas associés ou quoi
que ce soit. Oui, je pense qu'on peut...

INTERPRETER: I think this deals with what
you had said regarding the people who are
either associated or not and so forth.

25
MR. DEARDEN: Now, Your Honour, where he said
- where this comes up is, he says there's no
evidence that they listened to me. It's an
abusive logic, false, false. No evidence
they listened to him? Stephen Lendman wrote
the next day. He was in the email list that
he sent out. Lendman's in the list of 75 to
30
a hundred people that he emailed and he wrote

directly to Professor St. Lewis and then he wrote those awful publications that he wrote and he continues to do so. So, when he says to you in submission, Your Honour, how can you use the fact I'm doing the same thing about, you know, the slaw, you know, the blogger, the Law Times article, the main street media and all that, the answer is because he's a defendant in a libel action. Okay? And he says, and this one I still can't get over, that I accepted all comments, negative or positive, of - it was balanced report of what is happening in society, is what I've got in my notes. What an utter joke that is as a submission, a balanced report. He is a defendant in a libel action. He screened and approved and published all of those comments that called Professor St. Lewis a token, said she was hiding under the master's table, the Bah-Bah black sheep that English Works wrote, called her a turncoat. I mean it just is sickening what - that you could hear a submission that he did a balanced report of what is happening in society by approving, as a libel defendant, malicious and defamatory comments like that. And then, I'll leave it at.... This will be my last comment on the submissions and then I'm gonna deal with each of the paragraphs that he made submissions to you in the order, Your Honour. He says there's - in the

future, there's no reason to believe that he'll have an incapacity to pay? Really? Really? Okay. We're sitting here, he owes \$250,000. He's admitted that to you. This came to you live today. I read the part where he said it in the article, that he wrote when the jury was still out or still sitting, but now he's told you that and then he says, because I have my - well, first of all, he says, "Nothing stops me from attacking the fraudulent conveyances, I've called it. That's another source of income then." Wow. Wow. He take - he's admitted that he took a step to judgment proof himself, so he transfers his 60 percent interest in his house to his spouse for a dollar, and then he says, "Well then, bring a - you know you have to bring a motion and bring more proceedings to set aside the conveyance as fraudulent and go through that.", but that's supposed to be a source of income and that's some how supposed to be an indicator to you that he's gonna pay the \$350,000 that the jury just awarded? I don't think so, Your Honour. And then, he, at one point - oh yeah, labour grievance. He kept on saying to you that I had argued that my - that his labour grievance, which is under judicial review, could be worth over a million dollars to him? Your Honour, I've spoken to Professor St. Lewis and others on

the team to - 'cause I do not recollect ever, ever saying that he was in for a million dollars if he won his wrongful dismissal dispute. I do recall, Your Honour, that in privileged settlement discussions with Justice Smith, during the pre-trial conference, that I did mention that there was a possibility that Mr. Rancourt could come into a big sum of money if he were to win his labour grievance, which at that point in time, the decision had not been made. So, a couple - about a month after that, the arbitrator, who made some pretty telling findings about Mr. Rancourt's credibility in his arbitration award, of course, dismissed the wrongful dismissal labour grievance filed by Mr. Rancourt's union and all they've done is, they sought judicial appeal - judicial review. What? You're supposed to automatically assume this guy's gonna win? I don't think so. Good luck with winning a judicial review of a labour arbitrator's award, but it's no - it's absolutely zero evidence for you and I find it offensive that, that reference to what I had said in a privileged settlement discussion would have come out in public now from Mr. Rancourt but it does show you his attitude towards orders. And then, he says, "And there's no financial harm to the plaintiff as U of O is paying." Well, actually, he's the one that's ripping

off U of O. Okay? These costs go to U of O. Every cent of these costs go to U of O and the point is entirely irrelevant anyway. He keeps on attacking U of O, that, you know, how could they have agreed to pay the costs of an employee for his libel and yet, he's the one that owes U of O all of these costs and he owes 250,000 right now and counting and he has no intention of paying those but one day, he may. So, on the order itself though, Your Honour, if you could - and these are my last replies, in paragraph one, he says it's true that that's in the claim but it would preclude him from just - from a balanced discussion of what has happened. No, it doesn't. It's only related to the defamatory statements. Just write something, for a change, where you don't defame somebody. So, there should be no problem complying with paragraph one. Paragraph two, he says, "That's not in the Statement of Claim.", and if it is not covered by paragraph one of the Statement of Claim, Your Honour, I'd request an amendment to the claim, if it isn't included in paragraph 1(d), but again it's restricted to - don't defame Professor St. Lewis. That's all. It's pretty easy. Not much to ask. Stop defaming her. Paragraph three, Your Honour, the part on the hyperlinks, that could be amended to read, where you see in the third

5 line of paragraph three, that include any of
the statements the jury has found to be
defamatory and rather than say, "or that
contain a hyperlink to Exhibits 3 and 4.",
say, "and to remove all hyperlinks to Exhibit
3 and 4 in any of the articles he's
published.", and that would cover his concern
that if there was no defamation, as he says,
in the other articles that are hyperlinked,
10 then we just simply have that paragraph read,
"And to remove a - to remove all hyperlinks
to Exhibit 3 and 4 in any articles he has
published." And delete the words "or that
contain aid."

15 DENIS RANCOURT : Monsieur le juge, juste
pour signaler, ce sont des nouvelles
soumissions. J'ai, j'ai jamais entendu ces
soumissions-là. Il, il...

20 INTERPRETER: Your Honour, just to observe
that these are new submissions. I have never
heard...

LE TRIBUNAL : Mais il répond à votre
problème que si il dit ça, il...

INTERPRETER: He is replying to your issue...

25 DENIS RANCOURT : Avec tout respect, ce sont
des nouvelles soumissions ainsi que l'idée
d'amender le Statement of Claim.

30 INTERPRETER: Respectfully, these are new
submissions as well as the idea to amend the
Statement of Claim.

MR. DEARDEN: No, it isn't. It isn't.

THE COURT: It's a...

LE TRIBUNAL : Non, non, c'est une réplique à vous, aux problèmes que vous, vous soulevez de dire - que vous avez soulevés. Il répond ça comme possibilité. Okay.

INTERPRETER: No, it's a response. It's a reply to the issue that you have raised and he is replying to it as an option.

MR. DEARDEN: Your Honour, what he had said when he was talking about paragraph three of this order, in his submissions, was they're not seeking to remove only the link. Okay? So, now I'm saying okay, let's do that.

THE COURT: Mm-hmm.

MR. DEARDEN: Let's just remove the link. That's exactly - this is pure reply.

Paragraph four, he says, "I have no power over Google so why am I asked to assist?" His assistance, Your Honour, is if you do issue this order and then we serve it on Google to get them to take down, you know, that Google item that you see at - which has the headline to Exhibit Number 3, and they resist and they say, "Well, we need the consent of the publisher of the U of O Watch blog.", that's the assistance. He gives the assistance. He tells Google, you know, "Take - remove that search item." Remove it because it comes up now as number two on Joanne St. Lewis' Google search results and so, if they don't respect paragraph four as

it's written and want more from whoever published that, that's the assistance that he would give. He agrees with them taking it down.

DENIS RANCOURT : Je peux pas répondre à des choses que je sais même pas ce que ça veut dire, Monsieur le juge.

INTERPRETER: I cannot reply to things that I don't even understand, Your Honour.

LE TRIBUNAL : Non, non, mais c'est assez simple. C'est...

DENIS RANCOURT : Je viens d'apprendre...

LE TRIBUNAL : ...assez simple ce qui...

INTERPRETER: It's pretty simple.

DENIS RANCOURT : Je, je, je viens d'apprendre ce qu'il voulait dire quand il a écrit ça.

LE TRIBUNAL : Okay.

DENIS RANCOURT : Comment est-ce que je pouvais répondre...

INTERPRETER: I just learned what he meant when he read this, how could I reply...

LE TRIBUNAL : Non, non, mais je suis d'accord. Je...

DENIS RANCOURT : ...à sa motion sans savoir qu'est-ce que ça voulait dire?

INTERPRETER: ...to his motion without knowing what this meant?

LE TRIBUNAL : Bien, je pense, moi, j'avais compris là. Je sais pas si vous...

INTERPRETER: Well, I understood.

DENIS RANCOURT : Bien, moi, j'avais pas compris.

LE TRIBUNAL : Bien, ça...

DENIS RANCOURT : Qu'est-ce que ça veut dire assistance? Ça peut vouloir dire des millions d'affaires.

INTERPRETER: Well, I didn't understand what this assistance means.

LE TRIBUNAL : C'est assez clair. C'est que, ça vous demande si - pour obtenir que ça soit enlevé, ils ont besoin de quelque chose de vous comme, par exemple, votre consentement que vous allez le permettre. Vous allez les aider à le faire. C'est tout ce que ça veut dire. Ça dit pas plus, ça dit pas moins.

INTERPRETER: It's pretty clear. It is asking you, if - for obtaining the removal, they need something from you, for instance, your consent, you're going to allow them. You're going to assist them in doing so and that's all it means. It doesn't mean anything less, anything more.

DENIS RANCOURT : C'est, c'est clair maintenant. C'était pas clair avant et donc, j'ai des soumissions à faire avec - à ça...

INTERPRETER: It is clear now. It wasn't clear previously. So, I have submissions to make to this, in response to this.

LE TRIBUNAL : Non, non.

INTERPRETER: No.

DENIS RANCOURT : ...maintenant que je sais

ce que ça veut dire.

LE TRIBUNAL : Non, non, il - c'est clair.

MR. DEARDEN: Sit down.

LE TRIBUNAL : C'est clair. Je veux dire, c'est - il répond à ce que c'est quoi « assist ». C'est tout ce que ça veut dire et je pense que c'est clair. Ça se peut que vous ayez raison que ça devrait pas être donné, mais ce que je veux dire, c'est clair. Ça veut dire que s'ils ont besoin de votre aide, vous allez pas la refuser. C'est tout ce que ça veut dire.

INTERPRETER: It's clear. It's clear. He is responding to what "assist" means. It's all that it means and I think it's clear. It is possible that you are right, that it shouldn't be given but it's clear, if they need your help, you're going to - you're not going to refuse it to them.

DENIS RANCOURT : Si c'est écrit dans l'ordre comme tel, c'est clair. Si l'ordre est tel qu'il l'a écrit, c'est pas clair.

INTERPRETER: If it's written in the order as such, it's clear. If the order is as he has written it, it's not clear.

LE TRIBUNAL : D'accord. Bon. Allez-y.

INTERPRETER: Okay, go on.

THE COURT: Next.

MR. DEARDEN: Thank you, Your Honour.

Paragraph five, Your Honour, that wording comes from paragraph 1-25 of the *Griffin*

5 decision, of Justice Halfyard, from the B.C. Supreme Court. You'll find that at Tab 3 of the compendium, that I've just given you for the injunction. It's paragraph 1-25 and paragraph six, the same thing, the defendant there was restrained from contacting or communicating with the plaintiff directly or indirectly in any way or by any method. In *Griffin*, paragraph 1-24, is where you find that and, of course, I note that Mr. Rancourt's saying he has no interest in communicating with Professor St. Lewis, then he shouldn't, in any way, have a problem. Like, I don't understand why he's opposing it if he has no intention in the future, as he's represented to the court, that he's not gonna contact or communicate with Professor St. Lewis directly or indirectly in the future. So, those are my submissions, Your Honour, on the order and subject to any questions you have, that completes my submissions on the injunction.

15 DENIS RANCOURT : Est-ce que je peux répondre à certains points qui sont les points nouveaux?

20 INTERPRETER: Can I reply to some of the points that are new points?

25 LE TRIBUNAL : Non, monsieur....

INTERPRETER: No.

30 THE COURT: All right. So, I will have to consider this carefully. So, I will give my

decision tomorrow morning at eleven thirty.
All right.

MR. DEARDEN: Yes, Your Honour.

THE COURT: So, okay, let's - before I leave,
I need this, this, this, this.

DENIS RANCOURT : Monsieur le juge, est-ce
que ça veut dire qu'on devrait venir en cour
à onze heures et demie ou...

INTERPRETER: Your Honour, does this mean
that we have to be here in court tomorrow at
eleven thirty...

LE TRIBUNAL : Oui, je vais donner ma
décision...

DENIS RANCOURT : ...est-ce que vous allez
envoyer la décision par un autre...

INTERPRETER: ...because of rendering the
decision?

LE TRIBUNAL : Non, non, je vais la donner
demain là. C'est le temps que ça finisse
d'une façon ou d'une autre là.

INTERPRETER: No, I'm going to render my
decision tomorrow. I have to finish one way
or another.

DENIS RANCOURT : Donc, on est là demain
matin à onze heures et demie?

INTERPRETER: So, we are here - we are back
here at eleven thirty tomorrow morning?

LE TRIBUNAL : Oui, demain matin, tout le
monde est ici, ceux qui veulent bien l'être
et puis je vais donner ma décision.

INTERPRETER: Yes, everybody who wants to be

here will be here and I will render my decision.

DENIS RANCOURT : Merci. Monsieur le juge, j'avais des questions procédurales très simples, mais qui sont des choses que je - j'ai besoin de savoir en tant que personne auto-représentée.

THE COURT: Okay.

INTERPRETER: Thank you. Your Honour, I had procedural questions, very simple ones but these are things that I need to know as a self-represented individual.

LE TRIBUNAL : Oui.

INTERPRETER: Yes.

DENIS RANCOURT : Très...

LE TRIBUNAL : Si y'a quelque chose que, oui, si...

INTERPRETER: If there is anything...

DENIS RANCOURT : Très simplement, premièrement, ma compréhension est que ce qui s'est passé aujourd'hui et ce qui se passera demain matin à onze heures et demie, ça fait partie du procès. C'est...

INTERPRETER: Very simply, first of all, my understanding is that what happened today and what is going to happen tomorrow morning at eleven thirty, is part of the trial.

LE TRIBUNAL : C'est ça. Y'avait les - c'est que y'a deux réclamations, si on veut, dans ce - dans les libelles. Y'a la question des dommages, qui est décidé par le jury puis

le - alors que la question d'injonction doit être décidé par le juge.

INTERPRETER: That's it. There are two claims, if you wish. In the libel, there is the question of damages. That has been decided upon by the jury and then, the injunction issue has to be decided by the judge.

DENIS RANCOURT : Okay, ça, c'était ma première question. Ma deuxième question, donc, ça, ça veut dire que le procès va terminer demain? Est-ce que c'est - j'ai bien compris? Oui?

INTERPRETER: That was my first question. My second question, so that means that the trial is going to end tomorrow? Did I understand correctly? Yes?

LE TRIBUNAL : Il va rester inque à décider les dépends.

INTERPRETER: We just have to decide on the costs.

DENIS RANCOURT : Oui, qui peut se faire...

LE TRIBUNAL : Puis l'autre question, c'est une question séparée. La question de votre outrage, ça, c'est une question séparée.

INTERPRETER: The other issue is a separate question. Your contempt is then a separate question.

DENIS RANCOURT : Et donc, cette question séparée là, ça serait - est-ce que c'est une motion? Qu'est-ce que - comment ça s'appelle

cette autre chose?

INTERPRETER: So, this distinct issue, is it a motion? What is it called?

LE TRIBUNAL : Non, moi, je vous - c'est moi qui l'initie en vous ordonnant de vous présenter en me disant pourquoi je devrais pas vous déclarer en outrage. Donc, c'est...

INTERPRETER: I am initiating it by ordering you to appear to - for - to justify why you shouldn't be cited in contempt.

DENIS RANCOURT : Est-ce...

LE TRIBUNAL : ...une procédure qui est initiée par cette ordonnance de vous présenter et de faire preuve que vous ne devriez pas être déclaré en outrage. Donc, c'est pour ça que vous vous présentez le 20 - je me souviens pas là.

INTERPRETER: So, this is an order to appear. You have to justify why you shouldn't be cited in contempt. That's why you have to appear on the...

DENIS RANCOURT : Le 25. Le 25.

LE TRIBUNAL : Pour m'expliquer pourquoi il serait - vous ne devriez pas.

INTERPRETER: ...25th to explain to me why you shouldn't be cited.

DENIS RANCOURT : Et ça, c'est distinct de - du procès et...

INTERPRETER: And this is separate from the trial?

LE TRIBUNAL : Comme tel, oui.

INTERPRETER: As such, yes.

DENIS RANCOURT : ...c'est distinct d'un appel quelconque qu'il pourrait y avoir? Est-ce que c'est...

INTERPRETER: And it is separate from any kind of appeal that could take place?

LE TRIBUNAL : Ça, vous pouvez immédiatement, après que tout est fini, faire appel, oui, vous pouvez faire appel puis c'est sujet à un appel aussi séparément après, si vous voulez, oui.

INTERPRETER: That, you can do immediately right after this is finished, you can appeal, yes, and it is also separate, is the appeal is separate as well.

DENIS RANCOURT : La question de - du 25...

INTERPRETER: The question, the issue of the 20...

LE TRIBUNAL : Toutes les questions sur laquelle y'a un droit d'appel, vous avez un droit d'appel. Oui.

INTERPRETER: Any issues that you have are right to appeal. You have the right to appeal.

THE COURT: Yes, sir?

MR. DEARDEN: Just want to make sure I'm understanding what Mr. Rancourt is trying to get at here. If tomorrow morning at eleven thirty, Your Honour, you - you're issuing an order for the injunction and that's it. The trial is now finished...

THE COURT: Yes.

MR. DEARDEN: ...and his appeal time limits starts running...

THE COURT: Yes.

MR. DEARDEN: ...tomorrow.

THE COURT: Yes.

MR. DEARDEN: So, he's clear on that. The show cause for contempt, that's a complete issue.

THE COURT: It's a separate matter for purpose of appeal, yes.

DENIS RANCOURT : La question des coûts, c'est la même chose? C'est séparé?

INTERPRETER: The issue of costs, is the same thing? Is this something separate?

LE TRIBUNAL : Oui, on peut...

INTERPRETER: Yes.

THE COURT: Well, there's a special rule about that.

MR. DEARDEN: Yeah.

THE COURT: I suppose - yeah.

MR. DEARDEN: And he knows them all too well.

THE COURT: Okay. That's a separate rule.

You can - I won't get into...

DENIS RANCOURT : Okay.

LE TRIBUNAL : Je veux pas donner des avis...

DENIS RANCOURT : Non, non. Je comprends.

LE TRIBUNAL : ...juridiques. Moi, j'essaye de vous aider un peu, mais je peux pas vous donner d'avis juridiques.

INTERPRETER: I will not give you legal

counsel. I told you what I have but I can't give you any legal advice.

DENIS RANCOURT : J'apprécie beaucoup.

INTERPRETER: I appreciate it very much.

LE TRIBUNAL : Juste - okay. Les - ça va me prendre aussi, monsieur, les R. Est-ce qu'ils sont tous ici?

INTERPRETER: I will also need - they're all here?

GREFFIER DE LA COUR : Vos copies, je suis pas certain si vous les avez.

INTERPRETER: (Inaudible.)

LE TRIBUNAL : Okay, bien, vérifie donc ça qu'est-ce que j'ai puis qu'est-ce que j'ai pas puis je déciderai. J'ai peut-être - c'est vrai que comme la lettre, la première que j'ai déposée, c'était la lettre de monsieur Rancourt au juge - le nouveau juge régional principal là.

INTERPRETER: To the new judge, the new regional....

GREFFIER DE LA COUR : Oui.

LE TRIBUNAL : Fait qu'en tout cas, vérifiez ça que je les aie tous puis vous pourrez me les monter. C'est tout? Comme je dis, je peux pas vous donner d'avis légaux, mais si vous...

INTERPRETER: So, just check that I have everything and just - or you can bring them up to me. Is that it? As I said, I can't give you any legal advice.

DENIS RANCOURT : Non.

MR. DEARDEN: Thank you, Your Honour.

DENIS RANCOURT : Est-ce que je pourrais demander que vous donnez une directive au registraire de me faciliter le plus possible, l'accès aux boîtes, étant donné que y'a un temps limite pour faire appel et que je dois avoir exactement les documents et tout ça?

INTERPRETER: Can I ask you to give instructions to the clerk so that I could have access to the boxes because there are limited time for submitting an appeal and I want to make...

LE TRIBUNAL : Bien, ça, vous pourrez faire ça, faire une demande. Si vous avez besoin du temps, y'a des procédures qui peuvent être faits pour faire appel. Comme si vous avez - mais ça, dans le moment...

INTERPRETER: This, you can do those - you can make your request. If you need time, there are procedures that can take place for the appeal but at the present time...

DENIS RANCOURT : L'exhibit que j'aimerais...

INTERPRETER: The exhibit...

LE TRIBUNAL : On le sait pas qu'est-ce que - il va falloir que ça soit basé sur des choses que vous savez au moment où vous le savez.

INTERPRETER: We don't - you will have to use the information you have at the time you have it.

DENIS RANCOURT : Juste l'exhibit des

questions au jury, j'aimerais bien avoir une copie aujourd'hui. Est-ce que vous pourriez demander au registraire de m'en donner une copie, s'il vous plaît?

INTERPRETER: Just the exhibits and the questions to the jury, I would like to have a copy today. Can you please ask the clerk to give me a copy of it?

LE TRIBUNAL : Est-ce qu'on a une copie d'extra des questions au jury? Moi, j'ai pas de.... Pardon?

INTERPRETER: Do we have a copy of the questions for the jury?

GREFFIER DE LA COUR : J'en ai une.

LE TRIBUNAL : C'est une copie d'extra? Vous pouvez lui donner.

INTERPRETER: So, it's an extra copy? You can give it to him.

DENIS RANCOURT : Merci.

INTERPRETER: Thank you.

DENIS RANCOURT : Merci, Monsieur le juge.

INTERPRETER: Thank you, Your Honour.

...PROCEEDINGS ADJOURNED (4:35 p.m.)

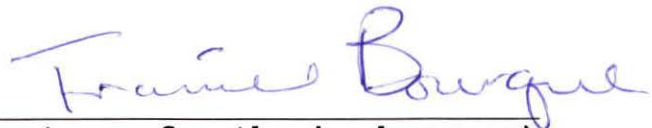
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December 17, 2014

(Date)



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SUPERIOR COURT OF JUSTICE

5

B E T W E E N :

JOANNE ST. LEWIS

Plaintiff

10

- and -

DENIS RANCOURT

Defendant

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E X C E R P T O F P R O C E E D I N G S A T T R I A L
BEFORE THE HONOURABLE JUSTICE M. CHARBONNEAU
on June 6, 2014, at OTTAWA, Ontario

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APPEARANCES:

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R. Dearden

Counsel for the Plaintiff

D. Rancourt

In Person

(i)
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SUPERIOR COURT OF JUSTICE

T A B L E O F C O N T E N T S

W I T N E S S E S

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	<u>In-Chief</u>	<u>Examination</u>	<u>Examination</u>
-	-	-	-

E X H I B I T S

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Legend

[sic] - Indicates preceding word has been reproduced verbatim and is not a transcription error.
(ph) - Indicates preceding word has been spelled phonetically.

Transcript Ordered:	July 4, 2014
Transcript Completed:	February 4, 2015
Ordering Party Notified:	February 4, 2015

FRIDAY, JUNE 6, 2014

THE COURT: Good morning. So, I received...

DENIS RANCOURT : Bonjour, Monsieur le juge.

INTERPRETER: Good morning, Your Honour.

LE TRIBUNAL : J'ai reçu votre courriel.

INTERPRETER: I received your email.

DENIS RANCOURT : Avant, avant de parler de ça, Monsieur le juge, y'a quelque chose d'important que j'aimerais amener en premier, si vous me donnez juste 30 seconds. Ça serait très important. C'est la chose suivante : je demande que cette Cour détermine si oui ou non, je suis un parti à cette action en ce moment et je demande ça pour les raisons suivantes : il y a les coûts qui sont à déterminer et la jurisprudence est très claire qu'un non-parti ne peut pas payer des coûts dans une action. Si la position c'est que vous m'avez invité par courtoisie à faire des présentations que je ne suis pas un parti, ça change beaucoup de choses par rapport aux soumissions que nous devons faire à l'avenir. Aussi, ça change comment je vais procéder en appel. À savoir si je suis un parti ou pas, ça change ma position pour procéder en appel et aussi, ça, ça a une implication importante par rapport à quelque chose qui est à venir le 25 septembre, c'est-à-dire la - le - soit disons *show cause* et pour ces raisons, il est très important et je veux que cette Cour détermine si oui ou non je suis un parti dans cette action.

INTERPRETER: Before speaking of that, Your Honour, there's something important I'd like to raise earlier, if you want to give me 30 seconds. It's

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very important. It's the following: I ask that this Court determine whether, yes or no, I am a party in this action presently and I ask that for the following reasons: there are costs to be determined and case law is very clear that a non-party cannot pay costs in an action. If the position is that you have invited me as a courtesy to make comments, I am not a party. It changes a lot of things with regards to submissions we need to make forward - going forward. It also impacts how I will proceed with an appeal, that is, whether or not I am a party, it will change my position as to whether or not I appeal and - or how I appeal and also has an implication, an important - because something that will occur on the 25th of September, that is this show cause of September 25th. For those reasons, and I want that this Court to determine if yes or no I am a party in this action.

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LE TRIBUNAL : Okay. Autre chose? Non?

THE COURT: Anything else? No...

DENIS RANCOURT : Oui. Y'a eu, y'a eu...

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LE TRIBUNAL : Je n'ai pas à déterminer ça, monsieur - je n'ai pas à déterminer ça là. J'ai d'autre chose à décider, mais j'ai pas à déterminer ça. Bon.

THE COURT: I don't have to determine that, Mr. Rancourt. I don't need to determine that. I have other things to determine but I don't have to determine....

DENIS RANCOURT : Mais j'ai, j'ai un autre point...

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INTERPRETER: I have other things...

LE TRIBUNAL : L'autre chose j'ai lu, j'ai reçu votre

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- asseyez-vous. J'ai reçu vos choses additionnelles puis ça ne change absolument rien à la situation. Les commentaires faits par la Professeure ou monsieur Dearden, dans les circonstances, n'ajoutent rien. J'ai lu - j'ai pris l'occasion de regarder les deux causes plus spécifiquement que vous avez citée. La cour - la cause de la Cour d'appel du Québec est - à pas de pertinence. C'était relatif à une injonction interlocutoire ou préliminaire. Donc, ça n'a pas rien d'affaire avec ceci puis j'ai - je mentionnerai quelque chose concernant ça et concernant Tozcar (ph) plus tard.

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INTERPRETER: Please sit down. I've received your additional materials. It changes, in no way, the situation. The comments made by St. Lewis or Mr. Dearden in the circumstances change nothing. They don't add anything. I took the note of the two cases you quoted. The Court of Appeal case from Quebec is not pertinent. It was related to an interlocutory injunction or a preliminary, so it has nothing to do with this and I also mentioned something about that as well as Tozcar.

DENIS RANCOURT : J'ai un autre point...

INTERPRETER: I also have another thing to determine.

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LE TRIBUNAL : Donc, voici ma décision.

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DENIS RANCOURT : ...important, Monsieur le juge. Je demande que le courriel que j'ai envoyé hier soit mis comme exhibit R dans cette action. J'insiste là-dessus et aussi le courriel de réponse de monsieur Dearden et j'ai amené des copies ici pour que ça soit mis en exhibit.

INTERPRETER: Your Honour, I also have another thing to ask. I ask that the email I sent yesterday be added as an R-A exhibit in this matter, and also Mr. Dearden's reply and I've brought copies so that it can be added as exhibits.

LE TRIBUNAL : Pas besoin, j'en ai une ici. Okay. On va déposer époser ça comme R.... On est rendu à quoi, R quoi?

INTERPRETER: Not needed, I have some. We're going to file this then. What are we at, R what? (Inaudible).

GREFFIER DE LA COUR: R24.

LE TRIBUNAL : C'est ça. Donc, vous pouvez la brocher ensemble.

EXHIBIT NUMBER R24: Email from Denis Rancourt, dated June 5, 2014 - produced and marked.

DENIS RANCOURT : Et, et il faudrait que l'attachement soit inclus, Monsieur le juge.

INTERPRETER: And I would also - the attachment to be included.

LE TRIBUNAL : Oui. Bien, tout est ensemble là, oui.

DENIS RANCOURT : Je, je vois que y'a juste quelques feuilles là dans ce que vous avez donné au greffier et j'ai ici des copies avec l'attachement, si vous voulez, si ça peut aider.

INTERPRETER: I see that there's only a few pages what you gave to the clerk. I have copies here with the attachment if it can be of assistance.

LE TRIBUNAL : Si vous voulez. D'accord.

DENIS RANCOURT : Alors, voici la copie avec l'attachement et j'en donne une copie à monsieur

Dearden aussi.

INTERPRETER: I gave a copy to Mr. Dearden.

LE TRIBUNAL : Okay, moi, j'en veux pas là, personnellement.

INTERPRETER: I don't want it.

DENIS RANCOURT : Et ça, ça serait R quoi, Monsieur le juge?

INTERPRETER: That would be R what, Your Honour?

GREFFIER DE LA COUR : R24.

DENIS RANCOURT : R24? Et aussi le courriel de réponse de monsieur Dearden, j'aimerais que ça soit R25. J'ai amené des copies ici.

INTERPRETER: R24. And also Mr. Dearden's reply, I would like it to be R25. I brought copies.

LE TRIBUNAL : D'accord. Je pensais qu'on les mettrait tous ensemble comme un, mais parce que il - moi, je l'ai reçu comme un ajout avec le vôtre en dessous. Ça fait que ça...

DENIS RANCOURT : C'est...

LE TRIBUNAL : ...répète la même chose.

INTERPRETER: I thought we were just going to file them as a bundle, but I received it as an addition with yours under...

DENIS RANCOURT : C'est, c'est...

INTERPRETER: It was the same thing.

LE TRIBUNAL : De toute façon, oui, d'accord.

DENIS RANCOURT : C'est un courriel séparé. Le mien avait un attachement. Celui-là n'a pas d'attachement. C'est un courriel séparé.

INTERPRETER: It's a separate email. Mine has an attachment.

LE TRIBUNAL : Non, mais c'est une réponse. C'est une suite là du...

INTERPRETER: This is an answer or a reply.

DENIS RANCOURT : Oui.

INTERPRETER: Yes.

LE TRIBUNAL : D'accord.

DENIS RANCOURT : Donc, ça, c'est R25, si je comprends bien?

INTERPRETER: So this is R25, if I understand correctly?

GREFFIER DE LA COUR: R25.

EXHIBIT NUMBER R25: Reply email from Mr. Dearden - produced and marked.

LE TRIBUNAL : Donc, je vais maintenant donner ma décision concernant l'injonction.

INTERPRETER: I'm now going to render my decision concerning the injunction.

...SEE SEPARATE TRANSCRIPT

DENIS RANCOURT : Excusez-moi, qu'est-ce qui a changé finalement?

INTERPRETER: Pardon me. What changed, finally?

LE TRIBUNAL : C'est changé par « *provide reasonable assistance.* » Donc, c'est en relation avec obtenir que quelque chose soit enlevé par Google. Ça fait que *reasonable*, c'est certain que si on vous demande de, je ne sais pas moi, payer 300 piastres pour faire ça, c'est pas ça qui est - c'est tout simplement quelque chose à faire comme signer un consentement ou dire à Google vous êtes d'accord. Donc, c'est *reasonable assistance*. Si la Cour considère que c'est pas *reasonable*, comme si on vous demande

quelque chose qui est vraiment hors de l'ordinaire, bien là vous - ça ne sera pas *reasonable*.

INTERPRETER: It's "provide reasonable assistance." So it's related to something that may be removed by Google. So reasonable - for sure, if they ask you, I don't know, to pay \$300 to do that, it's not that. It's simply something to do like sign a consent or say to Google you are in agreement. So it's reasonable. If the Court decides that it's not reasonable, like if we find that we are asking you to do something out of the ordinary, then it's not reasonable.

DENIS RANCOURT : Donc, si je comprends bien, juste pour être spécifique, si Google, par exemple, me demande une permission, ça serait raisonnable que je leur donne la permission. C'est, c'est ça qu'on veut dire?

INTERPRETER: So if I understand correctly, let's say Google asks me permission it would be reasonable for me to give them the permission, that's what you mean?

LE TRIBUNAL : Oui.

INTERPRETER: Yes.

DENIS RANCOURT : Merci.

INTERPRETER: Thank you.

...WHEREUPON THE MATTER IS SPOKEN TO

DENIS RANCOURT : J'ai, j'ai un, un autre point de procédure qui est important, Monsieur le juge. Vous, vous n'avez pas trouvé que je ne suis pas un parti alors je demanderais que monsieur Dearden me traite comme si j'étais un parti parce que y'a beaucoup de choses pratiques qu'il faut faire avec un appel et

par exemple, l'ordre que vous allez signer, c'est lui qui va l'avoir et normalement, c'est son devoir de m'en donner une copie. Y'a toutes sortes de choses comme ça qu'un parti a le droit de l'autre parti et j'aimerais que ces choses-là soient suivies parce que - parce que ça pas été trouvé que je suis pas un parti et parce que ça serait pratique de faire comme ça. Je demande ça. Sinon, je trouve que c'est pas raisonnable qu'il, qu'il, qu'il agisse comme si j'étais un membre du public et...

INTERPRETER: I have another point, a procedural point, that's important, Your Honour. You didn't find that I'm not a party, so I would ask that Mr. Dearden deal with me like I am a party because there's a lot of practical things that need to be done with an appeal. For example the order that you'll sign - he'll have it. Normally it's his duty to give me a copy. There's all sorts of things like that that a party has a right to expect from another party and I would like that procedure to be followed. Because it was not decided that I'm not a party. Because it would be practical to behave that way or to conduct oneself that way. I find that it's not reasonable that he act as if I'm a member of the public.

LE TRIBUNAL : En ce qui a trait à la procédure pour injonction, monsieur - on peut pas être un ou l'autre là. C'est évident qu'il doit vous donner une copie de l'ordonnance puis ces choses-là. C'est...

INTERPRETER: Regarding the procedure for injunction, you can't be one or the other. It's obvious that he has to give you a copy of the order and these things.

DENIS RANCOURT : Donc...

LE TRIBUNAL : Vous avez participé...

INTERPRETER: You have participated.

DENIS RANCOURT : Merci.

LE TRIBUNAL : ...mais j'ai rien d'autre à ajouter à dire concernant votre chose.

INTERPRETER: But I have nothing else to add regarding your point.

C O U R T I S A D J O U R N E D

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FORM 2

Certificate of Transcript
Evidence Act, Subsection 5(2)

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I, Francine Bourque, certify that this document is a true and accurate transcription of the recording of Joanne St. Lewis v. Denis Rancourt in the Superior Court of Justice held at Ottawa, Ontario taken from Recording No.

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0411_CR36_20140606_095123 AND 0411_CR36_20140606_115815 which has been certified in Form 1, by John Curry.

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February 4, 2015



(Date)

(Signature of authorized person)

Videoplus Transcription Services ACT number 5542650147

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SUPERIOR COURT OF JUSTICE

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B E T W E E N:

JOANNE ST. LEWIS

Plaintiff

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- and -

DENIS RANCOURT

Defendant

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R E A S O N S F O R D E C I S I O N
(I N J U N C T I O N M O T I O N)

BEFORE THE HONOURABLE JUSTICE M. Z. CHARBONNEAU
on Friday, June 6, 2014, at OTTAWA, Ontario

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APPEARANCES:

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R. Dearden
A. Semenova
D. Rancourt

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Counsel for J. St. Lewis
In person

(i)
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SUPERIOR COURT OF JUSTICE
T A B L E O F C O N T E N T S

Transcript Ordered:	June 6, 2014
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LEGEND

[sic] - Indicates preceding word has been reproduced verbatim and is not a transcription error.

(ph) - Indicates preceding word has been spelled phonetically.

FRIDAY, JUNE 6TH, 2014

R E A S O N S F O R D E C I S I O N

CHARBONNEAU J. (orally):

In this action, the plaintiff claimed damages against the defendant for libel. The jury yesterday returned a verdict against the defendant. The jury found that the defendant had defamed the plaintiff, that he was actuated by malice when he did so, and awarded general damages of \$100,000 and aggravated damages of \$250,000 for a total award of \$350,000. In her statement of claim the plaintiff had also claimed the following relief. Paragraph 1(d), and I quote:

An interlocutory injunction and a permanent injunction to restrain the defendant from any further publication of the defamatory statements complained of in this statement of claim;

1(e) An order requiring the defendant to permanently remove or take down the defamatory statements complained of in this statement of claim from any electronic database where they are accessible;

1(f) An order requiring the defendant to assist the plaintiff in obtaining the removal or take-down of the defamatory statements complained of in the statement of claim from internet search engines' caches such as

Google and any electronic database where the defamatory statements are accessible, and other internet websites operated by third parties.

The evidence heard at trial clearly establishes that the defendant has carried out a persistent attack on the plaintiff, and that the theme of his attack is that the plaintiff lacks integrity and independence as a professional. He has done so in unequivocal terms, calling her the "house negro" of Allan Rock, the president of the University of Ottawa. His attacks on Professor St. Lewis are part of a more generalized attack on President Rock and the University of Ottawa. This feud has been ongoing for years.

In the context of this feud with the university, he has repeated his claim that the plaintiff was the "house negro" of Mr. Rock and that she participated in a major cover-up to hide the fact that the academic fraud adjudication process was subject to systemic racism. The evidence is clear that his attack on Professor St. Lewis was systemically prepared and orchestrated with the help of Ms. Gervais, the person from the Student Appeal Centre who had published a report raising the allegation of systemic racism.

The defendant first started questioning the integrity of Professor St. Lewis in December, 2008, shortly after she delivered her evaluation

of the SAC report alleging that the academic fraud process was subject to systemic racism. The defendant was already closely involved with Ms. Gervais, the author of the SAC report and in fact helped her write her response to the plaintiff's evaluation.

From December, 2008, on a persistent and repeated basis, the defendant pursued his defamation of plaintiff on his online blogs, "U. of O. Watch" and "Activist Teacher". At the time of trial, there were still approximately 68 articles remaining online.

Although he was asked to remove the defamatory articles on many occasions, he refused to do so, and in fact continued posting new articles after the requests. He also linked many articles written by his activists supporters. It is clear to me he has no intention of stopping.

His attacks on Professor St. Lewis appear to be one of his weapons in his long-lasting and ongoing battle against the University of Ottawa, and its president, Allan Rock.

He has repeated time and time again the same allegations that Professor St. Lewis has covered up systemic racism at the university at the request of the President. He claimed that he had proof of this coverup as a result of emails that had been provided to him by Ms. Gervais. The

5 evidence clearly proves there was no such coverup and that Mr. Rancourt had recklessly or intentionally failed to draw attention to certain portions of these emails which showed otherwise. It is clear however that he never tried to find the truth about the existence or not of the coverup. He was reckless in this regard.

10 The defamatory attacks against Professor St. Lewis were particularly harmful because they were disseminated on the internet and they went to the heart of her professional reputation. The plaintiff acquired, through the years, an excellent reputation as a lawyer and as a law professor. She was recognized as a professional who had accomplished much to ensure protection of human rights. She has been severely hurt and affected by the defamation.

20 As the jury found, the defendant's published articles would be understood by a reasonable member of the public to mean that Professor St. Lewis has no integrity and no independence. It would also be understood - his reference to "house negro" - by members of the black community to mean she was a traitor and a pariah to her community.

30 Mr. Rancourt has pursued all possible avenues to try to delay these proceedings and in doing so he has been ordered, on different occasions, to pay costs to the plaintiff. He has failed to pay and

he confirms that he does not have the means to pay the costs award the or the damages award.

The defendant has shown a total disregard for the judicial process. Although he was told by the Court after a *voir dire* hearing that he could not advance his abuse of process defence, he tried nevertheless to plant the idea in the jury's mind during his opening statement. I had to stop him.

Mr. Rancourt is a very intelligent and highly educated man. Often he pleads innocence, or the fact that he is not a lawyer, to explain his so-called mistakes. He asks the Court questions, but it has become clear to me with time that he knows the answer, but simply wants something on the record from the Court which he hopes that he will be able to use in some matter later on.

The defendant has been actively involved in these proceedings and has been able to bring certain interlocutory issues up to the Supreme Court of Canada on two occasions. It is clear he is able to put together able legal arguments in his favour.

At the opening of the second day of trial, he read a prepared, written statement to the Court advising the Court he would not continue participating in the trial in view of the fact that he had now concluded he could not get a fair trial because I would not allow him to advance

his abuse of process defence. He walked out and only came back after the verdict to defend the claim for a permanent injunction.

During the trial however he had a number of his close activist associates attending trial and keeping him informed of the progress of the trial. He asked two of his witnesses to attend and ask to give evidence on his behalf. When I explained that Mr. Rancourt had to be present and lead his own evidence and that it could not be done in his absence, he wrote a letter to the newly-appointed Regional Senior Justice, James McNamara, requesting that Justice McNamara allow him to have his witness testify in his absence, because he said he had not withdrawn his defence but simply was absent in order not to be used as a prop by the Court.

One of the favourite tactics of the defendant - and I should say, this led to the first filing of the series of "R" exhibits which I will refer to, that was "R1" that I read in court and filed as "R1" - one of the favourite tactics of the defendant, from day one, was to try to have the judge assigned to his case recuse himself. He had been successful early on in the proceeding to have Justice Beaudoin remove himself from the proceeding, by raising the fact that a memorial trust had been established for his deceased son at the University by the law firm where his 42-year-old son was practicing at the time of his

untimely death. The defendant's tactic worked because Justice Beaudoin was deeply saddened and upset by that claim.

At the opening of trial, the defendant made a motion that I recuse myself on the grounds I had graduated from the University of Ottawa in 1974 and over the years made donations to my *alma mater* and at the time of my appointment to the bench in November, 1997, Justice Robert Smith was my law partner, and the fact the Justice Smith had been the case management judge for most of these proceedings. I dismissed this motion after hearing submissions in the absence of the jury.

From the time he walked out of the courtroom, the defendant published all types of comments in various forms on various blogs about what had occurred in the absence of the jury, and which he knew or should have known could prejudice the jury if it came to their attention. In some cases the publications were made by him on his blogs or sometimes indirectly by his activist friends.

On May 15, 2014, the afternoon after he walked out of the trial, he gave an interview to a reporter of the Ottawa Citizen telling him that I had withdrawn from the jury his key legal defence and that the trial was like a proceeding in the Soviet Union during the Stalinist era. That the Court had created a fake process where "I am

gagged" and he would not participate in that kind of "kangaroo court". The article was published in both the e-version and then the paper version of the Ottawa Citizen. In the paper edition on the first page of the City section, the defendant is quoted as saying that "the jury will not hear the whole story".

Cynthia McKinney, who was supposed to appear as an expert witness on the extended meaning of the words "house negro" for the plaintiff [sic], later published a petition on her blog, "change.org", entitled, "Give a fair court hearing to Denis Rancourt" in response to my ruling.

The timing of the petition, the minute details of the proceeding during those last few days in court, and the great similarity between the words used by Mr. Rancourt to explain the situation and the words of the petition lead me to the conclusion it was either written by him or for him with his input. The petition was also published on the blog of Mr. Rancourt's close associate, Mr. Hickey, by way of link.

The documents that are found in "R15" in relation to Ms. McKinney clearly indicates that she is well-known, that Mr. Rancourt knows her quite well, that she is a person he deals with, that, in fact, he indicates that she is one of his favourite important persons.

On May, 17 2014, Mr. Rancourt published on his blog, U. of O. Watch, an article entitled, "Why I walked out of the trial in which I am being sued." He includes word for word the written comment he had read in court, or written statement I should say, he had read in court, in the absence of the jury. It is noteworthy that he had written what he read in court. It raises suspicions that he intended all along to publish it. It was filed as "R5", that particular blog.

On May 22, 2014, the defendant published an article on his U. of O. Watch entitled, "Why did Regional Senior Justice Charles T. Hackland resign on May 8th, 2014?" He alleges in that article that Justice Hackland's resignation is related to the defamation case, *St. Lewis v. Rancourt*. He then explains in detail his unsuccessful recusal motion at the beginning of trial, his submissions at that hearing, and my decision. He also includes the fact that he had asked Regional Senior Justice Hackland to appoint a judge that was not a graduate of the University of Ottawa. He points out that on the very next day, Justice Hackland resigned.

He mentions that Justice Hackland, prior to his appointment, was a partner at Gowlings, the firm representing the plaintiff. It is noteworthy and has been known in the legal community that Justice Hackland advised those interested that he would be resigning in May 2014 in May 2013.

Finally, he incorporates the petition with a link to Cynthia McKinney's blog. The petition is now accompanied by numerous comments favourable to the defendant. You find that at "R7".

"R16" is an article on his blog, "Activist Teacher", May 25th, 2014. It's entitled, and I quote, "The crisis of access to justice in self-represented litigants". This article is obviously, again, an excuse to talk about his case and injustices he faces preventing him from getting a fair trial in this particular matter. This has continued on and on throughout the trial. See Exhibit "R18", "R19", "R20", "R21", "R22".

As a result thereof in a separate proceeding, I have cited Mr. Rancourt to appear on September 25, 2014 at 10:00 a.m. to show cause why he should not be found in contempt for having published, or caused to be published, prejudicial information about interlocutory proceedings and other trial proceedings that occurred during the absence of the jury while the jury was still in the process of hearing the case. This is the same information I'm putting him on notice that I refer to in those "R" exhibits.

The plaintiff relies on the conduct of the defendant throughout the proceedings outlined above in support of her position that the claim for a permanent injunction is justified on either

of the branches of set out by Justice Chapnik in the case of *Astley v. Verdun*, 2011 ONSC 3651.

Mr. Rancourt opposes the issuance of a permanent injunction on the following grounds.

One. Although there have been what he calls a “flurry” of decisions by the Superior Court at the trial level, the test enunciated by *Verdun* has never been the subject of approval by an appellate court. He submits that an injunction is a draconian remedy which should only be used in the rarest of cases. And he submits that the Supreme Court of Canada in *Grant v. Torstar Corp.*, [2009] 3 SCR 640, has confirmed that the proper remedy is damages and not an injunction.

Secondly, he then submits that the Court should not make an order preventing someone from saying something without knowing what that person will say in the future. He relies on the Quebec Court of Appeal decision in *Champagne v. Collège d'enseignement général et professionnel de Jonquière*, 1997 CanLII 10001 (QC CA).

Third, in this case it must be presumed, he argues, that the jury awarded \$350,000 as full and final compensation, since they were never told that an injunction could follow. Therefore the award should be considered to be final remedy in this case.

Four. While he gave interviews to the media, these journalists are professionals who decide what they are to publish. Therefore what they publish cannot be considered to be defamatory. He gives the example of the occasion when the *National Post* used "house negro" in a title of one of the articles on the present lawsuit.

Five. He submits that the jury never was given the opportunity to consider the other articles. And therefore we cannot say that those were a continuation of defamation of the defendant, or a petition of those.

Six. He argues that putting a link to an article is not a repetition of a defamatory statement. He simply is reporting what is happening in court as a journalist would. And he may do so as a blogger, and he relies again on *Torstar* for that.

Seven. He submits that the comments on blogs he had to publish, or the comments of individuals which appear on his blogs, I should say, that he had to publish them because it was his policy to accept and publish all comments in a balanced fashion.

Eight. He submits that the plaintiff has not asked for an interim injunction, as was the case in *Verdun*. And therefore, not having asked for an interim injunction, the plaintiff cannot now seek a permanent injunction.

Also he tries to distinguish the *Verdun* case on the basis that there was a close relationship while here he's a pure stranger to the plaintiff.

Nine. He submits he may very well get money to pay if he gets his job back.

Ten. He indicates that as for the fact that he has not paid his costs - the costs ordered against him - that's not what the second part of the test in *Verdun* is about. It's only about the award of damages.

Finally, he submits the draft order submitted by the plaintiff would prevent him from blogging totally. He also indicates that the claims made in the statement of claim - the three paragraphs I've mentioned - do not cover some of the paragraphs contained in the draft order. He indicates that, at best - in paragraph 4 - if there is to be something to be removed, it should be only links, the links themselves, and not the articles.

He indicates that the word "assist" - I should have said paragraph 3 before, now in paragraph 4, the word "assist" is too vague and uncertain, that the Court should have more specific things that he would have to do.

He submits that paragraph 5 is also not in the statement of claim, and it's really a trial by

ambush as a result thereof and why should the work of the plaintiff be in any way facilitated?

As for the non-communication clause 6 he says that he did not communicate with the plaintiff, he has no intention of communicating with her and therefore there's no need.

I have already dealt with so-called new relevant evidence which Mr. Rancourt indicated to me by way of email that I should take into account. I've taken it into account and it does not change really anything that I heard yesterday. We have now filed this email in the latest "R" exhibits.

Now here's my analysis of all of this.

I reject the submissions of the defendant that when he published articles after he quit the trial, he was simply reporting what was going on during the trial as any other reporter would do.

The defendant is not a reporter in this particular case but the defendant in the defamation action that is proceeding. So it is his conduct that is relevant here in determining how one may anticipate he will act in the future.

Without waiting to see whether the jury would find whether his publications in question were defamatory, he repeats them again and again. There is no indication whatsoever that the damage

award will in any way change his mind. It is clear he still believes his statements were either not defamatory or even if they were, that he was totally entitled to publish them because defamation law is wrong and must be eradicated.

To protest the law by making submissions as to why a law should be changed is one thing. To deliberately publish defamatory articles in the face of the existing law, before it is changed, because one disputes the law, is anarchy. That is clearly the state of mind of Mr. Rancourt.

Now in the case of *Grant v. Torstar*, the law has not been changed whatsoever. Yes, a blogger may publish comments on his blog in similar fashion as a journalist can, but both are subject to the same law of defamation. If the comment defames the person, then falsity and damages are presumed. It is up to the blogger or journalist to ensure that when he or she says something defamatory about someone, that that is true. If that is the case, then they need not worry about defamation law.

The case of *Champagne v. Collège d'enseignement général* has no application. It was a claim for an interim injunction. I won't say more about this case.

Although an injunction should only be given in the clearest of cases, my review of the totality

of the evidence clearly indicates this is such a case. It is the only remedy that will provide a genuine remedy to the plaintiff. I am satisfied that the test set out by Justice Chapnik in *Astley* is a valid and reasonable one and I adopt it.

In any event, the Court of Appeal has clearly established that an injunction is within the jurisdiction of the Court in a proper case.

I am satisfied that the plaintiff has demonstrated that the first branch of this test applies. The conduct of the defendant through the last three and a half years makes it more than probable that he will continue to publish further defamatory comments about the plaintiff.

His submissions themselves show he is in a fighting mood. He submits, for example, that simply linking a defamatory article about the plaintiff would not be defaming her. He submits that the plaintiff has yet to prove, in any event, that any of the other articles - that is, the articles which were not the specific subject of the jury's decision - were defamatory. He suggests the plaintiff has to prove that they were.

Moreover, the defendant has failed to publish a retraction nor offered at any time to do so. He is clearly not apologetic, even today.

I also find the plaintiff has satisfied the second branch of the test. The possibilities of payment of the costs, or the award of damages that the defendant suggests exist are, frankly, pure fantasy. There is no reasonable prospect he will be able to pay.

Moreover, his suggestion that the plaintiff could always bring an action that the transfer of his house to his wife was a fraudulent conveyance indicates he would be prepared to take all the means possible not to pay if he had eventually the financial means to do so.

The draft order submitted by the plaintiff is reasonable. It only forbids the defendant from publishing defamatory statements, not about stopping to blog whatsoever. It is not, as claimed by the defendant, a silencing of him. He can easily avoid breaching the injunction by simply refraining from publishing defamatory statements.

The defendant clearly would like to be able to force the plaintiff to have to start over from scratch every time he would publish a defamatory statement about her. This, again, indicates his state of mind.

It is important to remember that the jury found that the defendant was actuated by malice. I take this into consideration also.

5 The provisions of paragraph 5 are very reasonable and needed to protect the plaintiff. This is particularly so in view of the clear evidence that the defendant has the assistance and complicity of many other activists who would likely continue to defame the plaintiff. Paragraph 4 is only reasonable and it requires simply that the defendant provide reasonable assistance to the plaintiff in case the defendant's consent is required to remove something to remove something in reference to an engine. It may be that this, as I will indicate, may be slightly modified but essentially it is reasonable.

15 The suggestion of Mr. Dearden in relation to a modification of paragraph 3 is reasonable, that is the link, and I'll come back that.

20 So, for all these reasons I will grant the permanent injunction and I will sign the draft order subject to the following changes.

25 Now what are the changes you propose for paragraph 3 again, so that I get them right?

30 MR. DEARDEN: So on the third line, Your Honour, you would delete "or that contain, a)" - so paragraph 3, third line, you would delete the words....

THE COURT: "Or...."

MR. DEARDEN: "Or that contain, a)".

THE COURT: So "or hyperlink to Exhibits 3 and 4"?

MR. DEARDEN: No, it would read, "as found to be defamatory and to remove all hyperlinks to exhibits 3 and 4 in any articles he has published".

THE COURT: Okay, I'm sorry, you'll have to say that again.

MR. DEARDEN: Yeah, I'll give that to you again. So, "the jury has found to be defamatory". The new words are, "and to remove all"....

THE COURT: All right.

MR. DEARDEN: And then add an "s" to "hyperlink", so "remove all hyperlinks...

THE COURT: Okay.

MR. DEARDEN: ...to Exhibits 3 and 4", and add the new words "in any articles he has published".

THE COURT: So it would read "the statements that the jury has found to be defamatory and to remove all links to Exhibit 3 and 4 in...

MR. DEARDEN: "Any articles."

THE COURT: ...any articles he has published."

MR. DEARDEN: Period.

THE COURT: So I cross out "or that contain".

MR. DEARDEN: "Or that contain a".

THE COURT: Okay.

MR. RANCOURT: And - the word is "hyperlinks", not just "links".

THE COURT: Yes, that's right, thank you. And 4(4), I am modifying as follows. It will say,

“in order to provide reasonable assistance to the plaintiff in obtaining the removal or take-down etcetera.” To provide reasonable assistance to the plaintiff. Okay.

MR. RANCOURT: Pardon me. What changed, finally?

THE COURT: It's "provide reasonable assistance."

So it's related to something that may be removed by Google. So reasonable - for sure, if they ask you, I don't know, to pay \$300 to do that, it's not that. It's simply something to do like sign a consent or say to Google you are in agreement. So it's reasonable. If the Court decides that it's not reasonable, like if we find that we are asking you to do something out of the ordinary, then it's not reasonable.

MR. RANCOURT: So if I understand correctly, let's say Google asks me permission it would be reasonable for me to give them the permission, that's what you mean?

THE COURT: Yes.

MR. RANCOURT: Thank you.

THE COURT: All right. That's it.

MR. DEARDEN: Thank you, Your Honour.

THE COURT: I can send it now with these changes, but it will be preferable probably if you get one to me shortly in my office upstairs. If somebody goes at the reception I'll sign it and give it back right away.

MR. DEARDEN: I'll do that, Your Honour.

5 MR. RANCOURT: I have another point, a procedural
point, that's important, Your Honour. You didn't
find that I'm not a party, so I would ask that
Mr. Dearden deal with me like I am a party
because there's a lot of practical things that
need to be done with an appeal. For example the
order that you'll sign - he'll have it. Normally
it's his duty to give me a copy. There's all
10 sorts of things like that that a party has a
right to expect from another party and I would
like that procedure to be followed. Because it
was not decided that I'm not a party. Because it
would be practical to behave that was or to
conduct oneself that way. I find that it's not
15 reasonable that he act as if I'm a member of the
public.

20 THE COURT: Regarding the procedure for
injunction, you can't be one or the other. It's
obvious that he has to give you a copy of the
order and these things. You have participated.
But I have nothing else to add regarding your
point.

COURT SERVICES OFFICER: Order, please. All rise.

25 THE COURT: Hold on here. I will endorse the
trial record for the injunction. We are June 6.
For oral reasons given in open court, permanent
injunction to issue as per modified draft order.

CLERK REGISTRAR: Court is adjourned.

30 ORIGINAL SIGNED BY

THE HONOURABLE JUSTICE MR. MICHEL Z. CHARBONNEAU

Certificate

CERTIFICATE OF TRANSCRIPT
EVIDENCE ACT, subsection 5(2)

I, John A. Curry, certify that this document is a true and accurate transcription of the recording of St. Lewis v. Rancourt in the Superior Court of Justice held at 161 Elgin Street, Ottawa, Ontario, taken from Digital Recordings:

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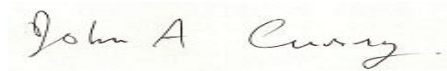
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which have been certified in Form 1.

August 29, 2014

Date



John A. Curry